

No. 10972

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE CLAYTON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes
VOLUME II
Pages 265 to 525

Upon Appeal from the District Court of the United States
for the Eastern District of Washington,
Northern Division

FILED

JUL 11 1945

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Upon Appeal from the District Court of the United States
for the Eastern District of Washington,
Northern Division

L. H. HOCUM

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Connelly:

Q. Please state your name.

A. L. H. Hocum.

Q. Where are you employed?

A. At the Spokane-Eastern **Bank**.

Q. In what capacity?

A. Assistant cashier.

Q. In that capacity will you state whether or not you have custody and control of the records of the savings accounts of various individuals?

A. All the officers have access to all the records of the bank.

Q. Have you any records for Account No. 166,213, in the name of Edna E. Cook or Georgia Cook?

A. Yes, sir.

Q. May I have them?

(Records handed counsel by witness.)

I hand you one you did not hand me, plaintiff's identification "27", and ask you to state what it is.

A. This is the savings pass book in the name of Edna E. Cook or Georgia Cook.

Q. When was that account opened?

A. October 14, 1942. [194]

Q. What are plaintiff's identifications "28", "29" and "30"?

The Court: Take "28" first.

(Testimony of L. H. Hocum.)

Q. Take this one first?

A. Exhibit "28" is a request for a cashier's check or draft, dated April 7, 1944, payable to Edward H. Teed, with the name of the purchaser Edna E. Cook, withdrawing \$3,500, showing it had been withdrawn from the savings account.

Q. What is plaintiff's identification "29"?

A. That is the original ledger card of the account of Edna E. Cook, showing deposits and withdrawal of the balance.

Q. It corresponds with the pass book, No. "27"?

A. Yes, sir. This "29" corresponds with the pass book.

Q. What is plaintiff's identification "30"?

A. This "30" is a cashier's check, dated April 7, 1944, payable to Edward H. Teed, in the amount of \$3,500.

Q. What relationship, if any, does "20" bear to "28"?

A. This is the request they gave when they order the check.

Q. In other words, identification "30" was given in compliance with this request? A. Yes, sir.

Mr. Connelly: I offer plaintiff's identifications "27", "28", "29" and "30" in evidence.

Mr. Smith: I think there is no objection.

The Court: They may be admitted. [195]

(Plaintiff's exhibits admitted in evidence as follows: Spokane-Eastern Bank, savings account of Cook, as "27"; Cashier's check, same bank, Cook to Teed, as "28"; Cook Ledger

(Testimony of L. H. Hocum.)

Card, same bank, as "29"; Cashier's Check, same bank to Teed, as "30".)

[Printer's Note]: Set out in full at page 61 of original reporter's transcript.

Mr. Connelly: That is all.

Mr. Smith: No cross-examination.

(Witness excused.)

VERN STEVENSON

called as a witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. Please state your name.

A. Vern Stevenson.

Q. Where do you reside? A. Spokane.

Q. What is your business?

A. Bus driver for the Auto Interurban Company.

Q. Were you so employed on April 10, of this year? A. I was.

Q. Over what route did you drive your bus?

A. From Spokane to Coeur d'Alene and return.

Q. And along what road—do you go by way of Apple Way or the [196] Trent road?

A. The Trent Road.

Q. Directing your attention to that day, April 10th, and again directing your attention to the lady

(Testimony of Vern Stevenson.)

sitting against the brass rail, and the gentleman sitting against the brass rail, I will ask you to state whether or not you observed either of them as passengers on your bus that day? Stand up, if you wish.

A. I did.

Q. What time of the day was it?

A. On the first trip out of Spokane in the morning. I left the depot at 7:15.

Q. Can you tell us where each of those persons got on your bus?

A. Mr. Kelly, the man, took a cab, he had missed the bus at the depot, and he took a cab out to Parkwater, and got the bus at Parkwater. The driver flagged the bus, and he got on the bus.

Q. Where did the lady get on your bus?

A. Out on the Trent Road.

Q. How far apart?

A. The lady got on about a mile after he did.

Q. Do you know whether or not they sat together or separately during that trip?

A. Well, when they first got on the car was full, and there were [197] no two seats together, but after I went by the aluminum plant I let *our* some employes of it there, and then they sat together to Coeur d'Alene.

Q. Did they get off at Coeur d'Alene?

A. Yes, sir; at the bus depot.

Q. Did you see them after that?

A. No, sir. Not that day.

Q. When did you later see them?

(Testimony of Vern Stevenson.)

A. It was either the next day or the following day; I wouldn't say which one, but at that time Mr. Kelly got on at the depot, and Miss Doores at the Park Road.

Mr. Connelly: You may cross examine.

Cross Examination

By Mr. Smith:

Q. When was this last incident?

A. I wouldn't be sure of it, whether it was the following day or the day after.

Q. The following day or the day after?

A. Yes, sir.

Q. These same two people that rode up with you on the 10th of April?

A. One got on at Park Road and the other at the stage depot.

Q. That is two trips they made to Coeur d'Alene?

A. That is right.

Q. Within a period of two days? [198]

A. As near as I can tell it was within a period of two days.

Q. What is it that recalls to your mind the first trip was on April 10th?

A. At the time I was contacted by the Federal Agent at Coeur d'Alene, he asked if I remembered these people, and he asked me about the time, and I told him it was around the first part of April.

Q. How long after this incident of April 10th was it that you were contacted by the agent at Coeur d'Alene?

(Testimony of Vern Stevenson.)

A. Either the latter part of May or the first part of June.

Q. And you had remembered more than a month and a half before these two people got on your bus?

A. I did, yes, sir. Not particularly the date, but I remembered they got on the bus.

Q. Did you also tell this agent at the time they had made the second trip to Coeur d'Alene within a period of two days? A. I did.

Q. And did you tell him you hauled them back from Coeur d'Alene, or do you know how they got back?

A. I don't know how they got back.

Q. Did they ride back with you on the April 10th or the first trip? A. No, sir.

Q. What time do you come back? [199]

A. My last trip out of Coeur d'Alene is 2:35 in the afternoon.

Q. Do you lay over there?

A. No, sir. I drive three trips.

Q. Your last trip leaves Coeur d'Alene at 2:35?

A. Yes, sir.

Q. And when you arrive at Spokane on that trip you are through work?

A. Yes, sir. Unless I have to go out on the next run.

Q. Were there any other buses running between Coeur d'Alene and Spokane on that day?

A. They run each hour. There is an hourly schedule.

(Testimony of Vern Stevenson.)

Q. And you make three of the trips?

A. Yes, sir.

Q. You do not recall that you hauled either of these people back on the 10th of April?

A. No, sir.

Q. But you do have a definite recollection you hauled them up there twice within the period of two days?

A. Yes, sir.

Mr. Smith: That is all.

Redirect Examination

By Mr. Connelly:

Q. Had the lady been a passenger on your bus previously?

A. Yes, sir.

Q. You knew her by sight as a passenger? [200]

A. Yes, sir.

Q. And you do recall the taxicab incident with reference to the man?

A. I do.

Mr. Connelly: That is all.

(Witness excused.)

ERICK R. ERICKSON

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Connelly:

Q. Your name, please.

A. Erick R. Erickson.

Q. Where are you employed?

(Testimony of Erick R. Erickson.)

A. At the Old National Bank in this city.

Q. In what capacity?

A. Assistant cashier.

Q. Have you with you any deposit slips or records of deposits of an account under the name of George Clayton?

A. I have.

Q. Will you produce them?

(Witness hands papers to counsel.)

Just generally speaking, without going into detail, will you state what the sheets comprising identification "31" represent, whose accounts, and the dates included, [201] beginning with the first date shown, and stating the last date shown?

A. These are photostatic copies of the statement of account of the Old National Bank with George T. Clayton, for the months of April, May and June, 1944.

Q. Any part of March?

A. Beginning with March 27, 1944.

Q. Now handing you identifications "32" and "33", I will ask you what those represent?

A. Each of these represents a deposit made in the Old National Bank by George T. Clayton, under date of April 12, 1944, for \$1,250—

Mr. Smith: Just a moment.

Q. (Mr. Connelly) Do not go into the amount. Will you state whether or not those are deposit slips obtained from the customer and retained by the bank as part of its files?

A. That is true.

(Testimony of Erick R. Erickson.)

Q. And with reference to the three ledger sheets, will you state whether or not these photostats are a part of the permanent records of your bank, or photostatic copies of the permanent records, ledger records, original ledger records of the bank?

A. They are photostatic copies of the original records of the bank, and the film from which these are made are permanent—part of the permanent records of the bank. [202]

Q. Whose account do “32” and “33” relate to?

A. The account of George T. Clayton.

Q. Are you personally acquainted with that depositor? A. No, sir.

Q. You have never seen him?

A. I would not say that.

Mr. Connelly: I offer plaintiff’s identifications “31”, “32” and “33” in evidence.

Mr. Smith: I object to them on the ground they have not been properly identified, and having no bearing on this case, in the present state of the evidence.

The Court: I will withhold the ruling as to the identification. I take it your objection is because no one has identified this defendant as being the George T. Clayton?

Mr. Smith: That is right.

The Court: It is not something this witness could do?

Mr. Smith: Yes.

The Court: I will withhold the ruling.

(Testimony of Erick R. Erickson.)

Mr. Smith: We can discuss it after the jury—will you wait outside a little while, Mr. Erickson?

Mr. Connelly: Bring the signature card of Mr. Clayton, too.

The Court: You have no cross-examination now? [203]

Mr. Smith: No, Your Honor.

(Witness excused.)

W. R. KNOWLTON

called as a witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. Will you tell the jury your name?

A. W. R. Knowlton.

Q. Where do you live? A. Spokane.

Q. What is your employment?

A. I am manager of the Pedicord Hotel, at 213 West Riverside.

Q. How long have you been manager of the Pedicord Hotel?

A. Since September 5th, of this year.

Q. Were you employed at the Pedicord Hotel prior to that time? A. No, sir.

Q. Do you have the registration records of guests of that hotel for April 21, 1944?

A. Yes, sir.

(Testimony of W. R. Knowlton.)

Q. Do you have any other record of a particular guest as of that date? Do not give the name.

(Witness hands to counsel.)

I hand you now plaintiff's identification "34" and ask you to state whether or not that is a part of the permanent records kept by the Pedicord Hotel, indicating, [204] without naming anyone, that a guest registered on April 21, 1944?

A. Yes, sir.

Q. What room was that guest, whose name appears on this identification, assigned to or given?

A. Room 214.

Q. Without naming names, will you state whether or not the guest whose name appears on identification "34" likewise appears on identification "35"? A. Yes, sir.

Q. And what is identification "35"?

A. These sheets are the disbursements of cash—in other words, the daily cash sheet.

Q. Do they carry the names of the guests?

A. Yes, sir. Also the room number and the file number or card number.

Q. The room number assigned to each guest?

A. Yes, sir.

Q. And does the name of the guest appearing on this card appear here (indicating)?

A. Yes, sir.

Q. Under the same room number?

A. Yes, sir.

Mr. Connelly: That is all. You may cross-examine.

(Testimony of W. R. Knowlton.)

The Court: You may cross-examine now, or wait until [205] these exhibits are offered in evidence.

Mr. Connelly: I will bring in the person who wrote the slips. It would be subject to that objection.

Mr. Smith: I have no cross-examination.

The Court: Just wait outside.

(Witness excused.)

DR. E. H. TEED

recalled as a witness by the Plaintiff, further testified as follows:

Direct Examination

By Mr. Connelly:

Q. I hand you plaintiff's identification "34", and ask you to state whether or not you wrote it?

A. Yes.

Mr. Connelly: I offer plaintiff's identifications "34" and "35" in evidence.

Mr. Smith: We can see no purpose in "35", and object to it for that reason.

The Court: You have no objection to "34"?

Mr. Smith: No.

The Court: It may be admitted. I will sustain the objection to "35". I do not think it adds anything. May Mr. Knowlton be excused?

Mr. Smith: Yes.

(Witness excused.)

(Pedicord Hotel register admitted in evidence as Plaintiff's Exhibit "34")

[Printer's Note]: Set out in full at page 65 of original reporters transcript.

EDNA COOK

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Connelly:

Q. What is your name, please?

A. Edna Cook.

Q. Where do you live?

A. At 815 7th Street, Coeur d'Alene.

Q. How long have you lived there?

A. Since about 1918.

Q. Are you acquainted with Dr. E. H. Teed, of Coeur d'Alene?

A. Yes, sir.

Q. Tell us whether or not you ever worked for him?

A. Yes, sir; I do.

Q. How long have you worked for him?

A. Approximately ten years.

Q. In what capacity?

A. Nurse and bookkeeper.

Q. Directing your attention to plaintiff's exhibit "19" and plaintiff's exhibit "27", tell us whether or not you have seen them or had them before, and what they represent.

A. Yes, sir; I have seen both before, and they

(Testimony of Edna Cook.)

represent a joint account my mother and I have in these two banks.

Q. Name the banks.

A. The Spokane & Eastern and the First Federal Savings & Loan. [207]

Q. Will you tell us the source of the funds from which those two accounts were maintained?

A. All the money in both of them belonged to Dr. Teed.

Q. I wish now to direct your attention to exhibits "22" and "23", and to draw your attention to the dates thereon and ask you to state whether or not you have seen them before, and if so to state the circumstances under which you have seen them.

A. Yes, sir; I have seen them both, and I drew both checks, on the instructions of Dr. Teed, and turned it over to him.

Q. You turned them over to Dr. Teed?

A. Yes, sir.

Q. Turn the checks over, and tell us whether or not you recognize the signatures constituting the endorsements on each of those checks?

A. Yes, sir. That is Dr. Teed's signature.

Q. Directing your attention now to government's exhibit "30", can you tell us whether or not you have seen it before, and if so under what circumstances.

A. Yes, sir; I have seen this check before. And I drew it on the Spokane and Eastern Bank, like the other two, under the doctor's instructions.

(Testimony of Edna Cook.)

Q. What did you do with exhibit "30" after it had been issued to you by the Spokane and Eastern Bank? [208] A. I gave it to Dr. Teed.

Q. Now directing your attention to the date of April 24th, can you tell us whether or not you drew any other money in any form from the Spokane and Eastern Bank, on that day? A. On the 24th?

Q. Yes.

A. Yes. I drew \$1,600 in currency, and gave it to Dr. Teed.

Q. From the savings account indicated here?

A. Yes, sir.

Q. In what denominations was that money?

A. There were 14 \$100 bills and four \$50 bills.

Q. Where did you turn the money over to Dr. Teed?

A. In the bank. It might have been—I will withdraw that—it might have been just outside the bank, but it seems he was in the bank when I handed it to him.

Q. Will you tell us whether or not you turned over any other money in addition to the sums you have indicated, to Dr. Teed, on or about the 24th of April, of this year?

A. On the 22nd of April I gave him \$3,000 in cash—in currency—of his money my mother and I were keeping for him.

Q. And where had you kept that money—where was it—in Spokane?

A. In Coeur d'Alene.

(Testimony of Edna Cook.)

Q. Is that all the money you gave Dr. Teed, or at some [209] other time did you give him any more?

A. On April 24th my mother and I loaned him \$500 in currency, a personal loan.

Q. Have you any idea what dimensions the \$500 item or the \$3,000 item was, which you gave to the doctor on the 22d of April?

A. Approximately, yes, sir.

Q. Tell us.

A. The \$3,000 was mostly \$50 bills. There were some twenties and the \$500 was in twenties and fives and tens; I think more fives and tens in the \$500 than twenties.

Q. When the cashier's checks of April 7 from the First Federal Savings and the S. & E. were handed to you, how long after that was it that you turned them over to Dr. Teed? How long after April 7th?

A. I believe it was the next day.

Q. And where did you turn them over to him?

A. In my home.

Q. At whose direction were those two cashier's checks withdrawn from the bank?

A. Dr. Teed.

Mr. Connelly: You may cross-examine.

Cross Examination

By Mr. Gleeson:

Q. There was \$3,000 from the account at Coer d'Alene? [210]

A. Yes, sir.

(Testimony of Edna Cook.)

Q. What bank was it in?

A. It was not in a bank.

Q. How was it kept?

A. It was in our possession at our home.

Q. You kept it someplace at home?

A. Yes, sir.

Q. You had no safe-deposit box or anything of that sort?

A. No, sir.

Q. You had a total of about how much money in your name and your mother's that belonged to Dr. Teed?

Mr. Connelly: At any particular time?

Q. I mean all this time, or during the month of April?

A. Well, it must have been around \$13,000, whatever that totaled up to was what we had.

Q. There was about \$5,000 in each of the two bank accounts, and \$3,000 at Coeur d'Alene?

A. Yes, sir.

Q. When did you receive the \$3,000?

A. Yes, sir.

Q. When did you receive the \$3,000?

A. At different times.

Q. Over what periods?

A. I couldn't tell you.

Q. And was it after the last bank account had reached \$5,000?

A. I couldn't say that either.

Q. Was there any reason why the \$3,000 was not deposited in [211] a bank?

A. Not that I knew of.

(Testimony of Edna Cook.)

Q. Had you any instructions from Dr. Teed in that respect? A. No, sir.

Q. You were keeping it at home on your own initiative? A. Yes, sir.

Q. For safe keeping? A. Yes, sir.

Q. What protection did it have?

A. I don't know that either.

Q. Did Dr. Teed have any receipt or record from you indicating you held that money for his use and benefit? A. No, sir.

Q. Did he have any record from you showing any of these accounts were held for him?

A. No, sir.

Q. You had never issued any receipt or anything of that sort to him? A. No.

Q. When you gave him the \$500 did he issue a receipt to you? A. No, sir.

Q. Did you have any record or note or promise of payment or anything else to indicate that money was to be repaid to you? A. No, sir. [212]

Q. Are you related to Dr. Teed?

A. No, sir.

Q. The only acquaintance you have with him is that of employer and employee?

A. That is right.

Mr. Gleeson: That is all.

Mr. Connelly: That is all.

(Witness excused.)

The Court: The jury is now excused until tomorrow at 1:30.

(The jury then retired from the court room.)

(Whereupon an adjournment was had to the hour of 1:30 o'clock p. m., December 7, 1944, at which time, all parties being present as heretofore, including all the jury, the trial was resumed as follows, to-wit:)

ERICK R. ERICKSON

recalled as a witness by the Plaintiff, further testified as follows:

Direct Examination

By Mr. Connelly:

Q. For the purposes of the record, you are the same Erick R. Erickson from the Old National Bank, who testified here yesterday afternoon?

A. I am.

Q. I will ask you to produce, if you have them, all of the deposit slips showing deposits made in the Old National [213] Bank, between August, 1943, and June, 1944?

The Court: That is quite an order—all deposit slips?

Mr. Connelly: By George Clayton. I beg your pardon.

Q. I now hand you Plaintiff's Exhibits for Identification 32, 33 and 36, consisting of several deposit slips, and ask you to state generally what they are, what they represent. Do not read the figures.

(Tsetimony of Erick E. Erickson.)

A. They represent deposits made in the Old National Bank to the credit of George T. Clayton.

Q. Between what dates?

A. Between the dates of August 1, 1943, and June 15, 1944.

Q. Do you have the signature card of George T. Clayton at the time this account was opened?

A. I have.

Q. May I see it? (Witness hands to counsel)
What is Plaintiff's Identification No. 37?

A. It is the signature card of George T. Clayton with the Old National Bank, signed by George T. Clayton, and given for the purpose of identifying him to the bank.

Q. Have you had occasion recently to use that card in connection with the defendant in this case?

Mr. Smith: I object to that as being immaterial.

The Court: Overruled.

Q. (Mr. Connelly) Have you had occasion in the last few days [215] to use that card in connection with George T. Clayton, the defendant in this case?
A. I have.

Q. Will you state the circumstances under which you did that.

A. He called on me yesterday and asked for information——

Mr. Smith: Just a moment. I object to that as incompetent, irrelevant and immaterial.

The Court: I presume it goes to the matter of identification. I sustained the objection yesterday as to these slips because they were in no way con-

(Testimony of Erick E. Erickson.)

nected with this defendant. I think that is the purpose of this testimony. I do not know what the witness will testify to.

Mr. Connelly: That is the only purpose, only the matter of identification of his signature card.

Q. (Mr. Connelly) Will you go ahead and tell the circumstances.

Mr. Smith: Your Honor overrules the objection?

The Court: Yes, I will overrule the objection and allow an exception.

A. He called on me yesterday about during the noon hour and asked for information concerning his account, and I used this card to identify him as being the person entitled to receive the information.

Q. (Mr. Connelly) What name did he give you when he called [216] on you?

A. George Clayton.

Q. How did you use the card?

A. I compared the signature he gave me at the time he was in yesterday with this card to identify him.

Q. Did he write that signature in front of you?

A. He wrote his signature in front of me yesterday.

Q. This defendant? A. Yes, sir.

Mr. Connelly: At this time I offer in evidence Plaintiff's Exhibits 32, 33, 36 and 37.

Q. One other question: Will you state whether or not the Identifications 32, 33 and 36, the group of deposit slips, represent all of the deposit slips to

(Tsetimony of Erick E. Erickson.)

the credit of George G. Clayton in the Old National Bank between the dates of August 1, 1943, and June 15, 1944?

A. The man who looked up these for me informed me that there was one deposit that eluded him and he did not have time to pursue it.

Mr. Smith: That is based on hearsay, if Your Honor please.

Q. (Mr. Connelly) Did you participate in securing any of these—supervise the work in any way?

A. I called on our Assistant Auditor to do this work for me, and he produced this result. [217]

Q. What is his name? A. W. G. Pool.

Mr. Smith: We object as being incompetent, irrelevant and immaterial and having no probative force or effect in the case, and not tending to prove or disprove any issue raised by the indictment, and as being prejudicial, in the nature of a confidential communication.

The Court: Let me see them (Court examines exhibits). Are you basing it on the ground there is no proof these are the deposits?

Mr. Smith: Yes, and on that ground as well.

The Court: I will sustain it on that ground.

Mr. Connelly: I did not know somebody was assisiting him. I have sent for Mr. Pool and I will offer proof on that.

The Court: I will withhold the ruling until you furnish that. I am not sure. I will hear from you on the question whether I will receive them at all,

(Tsetimony of Erick E. Erickson.)

but think you had better get Mr. Pool down here.

Mr. Connelly: I have sent for him. Do you want to cross-examine him now?

Mr. Smith: No.

(Witness excused.) [214]

ESTHER SETTERS,

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Connelly:

Q. Will you give us your name.

A. Esther Setters.

Q. Where do you live?

A. At 7224 East Carlisle.

Q. Where is that with reference to 7225 East
Carlisle? A. Directly south.

Q. Do you have a telephone in your home?

A. Yes, sir.

Q. What is the number? A. Walnut 1635.

Q. Are you acquainted with the defendant,
George Clayton, in this case? A. Yes, sir.

Q. How long have you known him?

A. Well, I don't know exactly when they first
moved there. I met him a month or so after they
moved in the house.

Q. When was that?

A. I couldn't tell you exactly.

(Testimony of Esther Setters.)

Q. Approximately?

A. About a year ago I think I met him. It was along in the winter. [218]

Q. Are you acquainted with Shirley Doores?

A. Yes, sir; I am.

Q. How long have you known her?

A. A year; maybe a little more.

Q. The same length of time?

A. No, sir. She came to the house and telephoned several times before I met him.

Q. Before you met George Clayton?

A. Yes, sir.

Q. Directing your attention to April 20th, of this year, can you state whether or not you received a long distance telephone call for Shirley Clayton?

A. Yes, sir, I did.

Q. What did you do in connection with that call?

A. I went out and called her. She was just getting in the car and I told her of the call.

Q. Who was getting in the car?

A. Shirley Clayton.

Q. Did those two people live in that house for the period of time you have known them?

A. Yes, sir.

Q. When you called her, did Shirley Clayton or Shirley Doores answer the phone in your home?

A. Yes, sir.

Q. Did you have occasion to hear anything she said? [219]

(Testimony of Esther Setters.)

A. I did not. I had company at that time and I went back in the front room to entertain my company.

Q. Did you have occasion to learn where the call was from?

A. When they called they said some place in Idaho. I didn't get the name of the town that was calling, and after I answered, some man was on the phone, and asked if I would call Shirley Clayton to the telephone.

Mr. Connelly: You may cross-examine.

Cross-Examination

By Mr. Smith:

Q. Did Shirley Doores stay there at the house most of the time or were there long periods when she was gone?

A. That I do not know. She several times told me she was going to the hospital and would be gone a few days, and if a telephone message came for her, to leave it at the house.

Q. Do you know, as a matter of fact, she was gone from time to time for extended periods?

A. No, sir; I do not.

Q. You did not neighbor back and forth?

A. No, sir; I did not.

Q. The only connection you had was when——

A. When there were telephone messages, was all.

Q. On this occasion on the 20th of April Shirley Doores came over to the house alone? [220]

A. Yes, sir; she did.

(Testimony of Esther Setters.)

Q. Did you notice whether or not Mr. Clayton waited for her? A. Yes, sir; he did.

Q. Did you see the car leave? A. Yes.

Q. What time of day was that?

A. I would say it was between 1:30 and 2:00. I don't know exactly. I had lunch and it was after that.

Q. Between 1:30 and 2:00 o'clock?

A. I would say about that.

Mr. Smith: That is all.

Mr. Connelly: That is all.

(Witness excused.)

E. H. CAMPBELL,

called as witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. Give your name, please.

A. E. H. Campbell.

Q. Where do you live?

A. At Coeur d'Alene, Idaho.

Q. What is your business?

A. Druggist and pharmacist.

Q. What is the name of the establishment in which you are [221] employed or which you may own— Do you own your own business?

A. No, sir. I work for Hart's Drug Store in Coeur d'Alene.

(Testimony of E. H. Campbell.)

Q. How long have you worked there?

A. Two years and three months.

Q. Are you acquainted with Dr. Teed?

A. Yes, sir.

Q. State whether or not you have filled prescriptions for Dr. Teed.

A. Yes, sir; a good many.

Q. I hand you Plaintiff's Identifications Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, and ask you to examine them, both on the front and the back, and state whether or not any of them bear your signature.

A. That was filled at the Hart Drug Store (indicating).

Q. Will you first select those filled at the Hart Drug Store? A. Okeh.

Q. Are these the ones filled at the Hart Drug Store?

A. Yes, sir. I suppose they were, yes.

Q. State whether or not you had anything to do with any of the exhibits which you say were filled at the Hart Drug Store.

A. When the druggist fills it he usually puts down the cost of the prescription in code. About the only way I have of identifying them, whether I filled them or not, is the [222] code number which you see on the bottom, and there is some print that looks like I might have put it down there.

Q. Do you know whether or not you put it there?

A. Not for sure, sir.

(Testimony of E. H. Campbell.)

Q. Do you know whether or not you had anything to do with any of these from your examination, or from memory?

A. I think probably I filled some of them, sir.

Q. Have you any recollection of having filled any of them?

A. Those four (indicating), I believe I did.

Q. Why do you say you believe that you did?

A. These marks on the bottom look like they have been written by me. They are not in handwriting. They are printed in letters.

Q. You are referring to Exhibits 4, 5, 7 and 13?

A. Yes, sir.

Q. Now, can you tell us whom you filled them for? A. I filled them for Dr. Teed.

Q. Personally? A. Personally.

Q. And did you deliver, or not, the medicines called for in the prescriptions, to Dr. Teed?

A. That is right.

Q. Now, will you state with reference to each of the four you have referred to, Plaintiff's Exhibits 4, 5, 7 and 13, what price you charged Dr. Teed for each of the pre- [223] scriptions you filled for him?

A. Going back to the one numbered Exhibit 7, the price was three dollars.

Q. That was for how much—what was it for and what quantity?

A. That is written for fifty half-grain morphine tablets. And No. 5, he was charged \$3.10.

(Testimony of E. H. Campbell.)

Q. And what was that for?

A. That is for——

Q. Do you have trouble with the Doctor's writing?

A. Yes, sir. That was filled for 100 quarter-grains of morphine tablets.

Q. What did you charge him for it?

A. Three dollars and ten cents.

Q. Going to the next one.

A. And No. 4 was written for twenty half-grain morphine tablets, and I charged him two dollars.

Q. And the next one?

A. And the next one, No. 13, was written for 100 dilaudid, 1/16th grains, and he was charged six dollars.

Q. Now, referring to Plaintiff's Exhibits 8, 9, 10, 11 and 12, is there anything on them which would indicate whether or not they had been filled at the Hart Drug Store—whether you had anything to do with them or not—whether there is anything there from your system of handling those things so you would know? [224]

A. I think they were, sir.

Q. Is there anything on them that would indicate whether they had been?

A. Going back to the mark in code, it looks like our mark. These are stamped with a numbering machine, that numbers each prescription numerically and successively, and it is filled.

Q. Is it stamped if the prescription is rejected or not filled?

(Testimony of E. H. Campbell.)

A. Yes, sir. It is stamped first. That is the first thing we do.

Q. Whether it is filled or not?

A. Yes, sir.

Q. Is there anything about the cost figure represented here by which you can recognize the writing— Do you recognize the writing of the cost figures?

A. I do not recognize the writing on these.

Mr. Connelly: That is all.

Cross Examination

By Mr. Gleeson:

Q. Did you deal with the doctor personally as a clerk, or were you doing the mechanical work of preparing the prescriptions in the back room? [225]

A. No. We waited on the doctor personally at those times.

Q. But you have no particular recollection of these particular times?

A. Nothing definite, other than the lettering on the prescriptions looked like I had filled them, and I remembered that Dr. Teed came in and got them.

Q. Dr. Teed, I presume, has bought morphine tablets there from time to time over a period of years?

A. Dr. Teed?

Q. Yes.

A. No. I would say that was a little unusual that the doctor got them.

Q. Do you remember on how many occasions you waited on him personally?

(Testimony of E. H. Campbell.)

A. For that particular thing?

Q. Yes.

A. No; I don't remember exactly. In that group maybe four or five times.

Q. I beg your pardon?

A. About four times.

Q. Are you saying that because you have these four prescriptions in front of you that you did, or do you remember them?

A. They indicate the number of times I think I waited on him.

Q. But other than that, and as far as you are concerned, the [226] printed lettering on the bottom you think might identify them as yours?

A. That is right.

Q. Will you please refer to the printing you told Mr. Connelly about.

A. This printing here (indicating).

Q. What does that mean?

A. These are the cost marks in code and we price each prescription that way.

Q. You all use the same code mark?

A. Yes, sir.

Q. And how many of you are there who fill these prescriptions or were there available to fill prescriptions during the period covered by these prescriptions—that is, apparently from January 24th— No, December 30, 1943, to April 1, 1944?

A. Two people.

Q. What was the other man's name?

A. H. H. Hart.

(Testimony of E. H. Campbell.)

Q. He is the owner? A. Yes, sir.

Q. Does he make similar marks?

A. Yes, sir. He uses the same code, and it is sometimes hard to distinguish between the way he prints and the way I do, but I feel sure I filled those four, and I am not sure [227] about the others.

Q. You think in each of these instances you delivered them to Dr. Teed? A. Yes, sir.

Q. They are made to two or three individuals, or did you notice that? This is Velma Rock. Did you deliver it to Dr. Teed personally?

A. Yes, sir. To my knowledge, I delivered all four of those to Dr. Teed.

Q. To Dr. Teed personally? Do you have any independent recollection of him coming in there on the 30th of December? A. Dr. Teed?

Q. Yes. I mean, do you remember any of these particular dates? A. No, I do not.

Q. Was there anything about the occasion for you to remember other than that Dr. Teed came in personally?

A. Anything that would tie it up?

Q. Yes. A. No.

Q. Did you ever refuse to fill any for Dr. Teed, for narcotics? A. I did not personally.

Q. Did you ever refuse to fill any of his prescriptions for narcotics, whether to him personally or some one else pre- [228] senting them?

A. No, sir; I did not.

(Testimony of E. H. Campbell.)

Q. Do you know this Velma Rock?

A. No, sir.

Q. Whose name appears on the prescription. Do you know Mike Sanders whose name appeared on this prescription?

A. No, sir.

Q. When you take a prescription like that, does the individual taking it have to sign for it?

A. No, sir. If it is delivered to the patient they do not have to sign for it.

Q. You keep no record, then, of the individuals to whom you actually deliver the prescriptions?

A. No, sir.

Q. And there is nothing in your records here now before the Court that you have seen, or in the drug store itself, where any record is kept of the individuals to whom the contents of the prescriptions are delivered?

A. No. No record but the prescription itself.

Q. Which merely indicates the name of the person for whose use it was intended?

A. Yes, sir; that is right.

Mr. Gleeson: That is all.

Mr. Connelly: That is all.

(Witness excused.) [229]

PERCY M. LANGS,

called as a witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. Will you state your name, please.

A. Percy M. Langs.

Q. Where do you live?

A. At Coeur d'Alene, Idaho.

Q. What is your business?

A. I am a druggist.

Q. What is the name of the store that you work in? A. The Rex Drug Store.

Q. Do you own that drug store? A. I do.

Q. How long have you been in business there?

A. As owner and manager for seven years.

Q. Are you acquainted with Dr. E. H. Teed of Coeur d'Alene? A. Yes, sir.

Q. Will you tell us whether or not you have had occasion to fill prescriptions from time to time written to Dr. Teed? A. Yes, sir.

Q. I hand you Plaintiff's Exhibits 1, 2, 3, 6, 15 and 16, and ask you to examine them, and examine them carefully, and tell us whether or not you have seen them before, and whether they have any identifying marks of yourself or your [230] store on them.

A. They are all from that store.

Q. Are there any identifying marks of yours personally on any you recognize as being put on them by any employee of your store?

(Testimony of Percy M. Langs.)

A. All of them are within what we call our serial number, within the date of the number appearing on the prescriptions in the files, and also there are code retail prices.

Q. Your retail prices? A. Yes, sir.

Q. Is that on each of them? A. No, sir.

Q. Will you segregate those which have your code retail price on them and which have not.

A. It is on half of them.

Q. On which does that appear?

A. Those three (indicating).

Q. Exhibits 1, 2 and 3? A. Yes, sir.

Q. And your code retail price does not appear on 6, 15 and 16? A. That is right.

Q. Are you acquainted with Dr. Teed's writing?

A. Yes, sir.

Q. Can you state whether or not those exhibits you have just testified about are in his handwriting? [231] A. I believe they are.

Q. Can you tell us whether or not you yourself filled any of those prescriptions which are before you and the numbers of which I have referred to?

A. These I know for sure (indicating).

Q. That is No. 1 and No. 3? A. Yes, sir.

Q. Have you any recollection of any of the others or any knowledge concerning them?

A. These two (indicating) were filled by one of my registered men.

Q. Do you recognize his writing?

A. This is definitely his writing and the date is on it (Indicating).

(Testimony of Percy M. Langs.)

Q. You are referring, to Exhibits 2 and 6?

A. Yes, sir.

Q. With reference, now, to Exhibits 15 and 16.

A. I cannot tell you definitely who filled those two.

Q. Is there anything indicating they have been filled?
A. Yes, sir.

Q. What?

A. The serial number. It is never numbered until the prescription is filled.

Q. That is your rubber stamp number?

A. A numbering machine number. [232]

Q. Can you tell us for whom you may have filled Exhibits 1 and 3?

A. No. 1 was filled for Mrs. Velma Rock, it says here.

Q. Have you any recollection of that? Do you know Velma Rock—have you ever seen her?

A. I have seen her since, but under a different name.

Q. Under what name? A. Shirley Doores.

Q. How about the other one you referred to?

A. I don't know that that prescription was ever picked up by Mike Sanders.

Q. Does it indicate it was filled?

A. Yes, sir.

Q. Now, with reference to those—those are the only two you personally know anything about?

A. I believe so. It is quite possible some of the others may have been referred to me.

(Testimony of Percy M. Langs.)

Q. Is there anything on them to indicate it or have you any recollection?

A. No, sir. There is no way to indicate it.

Q. Have you yourself filled any of the six exhibits before you for Dr. Teed himself—I mean, personally?

A. Do I understand you right——

Q. Whether or not you yourself personally filled any of these prescriptions, any of these six, for Dr. Teed? [233]

A. The prescription is never filled for anyone except for whom it is written. Some other person may have picked up the prescription, but it is never filled for anyone else but for whom it is written.

Q. Have you any recollection of who may have picked up the Mike Sanders prescription, No. 3?

A. I believe Dr. Teed picked it up.

Q. Have you any knowledge whether or not Dr. Teed picked up that or any of the other five exhibits before you?

A. Those that are written to Velma Rock I don't believe Dr. Teed picked any of those up. I believe they were picked up by Miss Doores, or some one for her, but not by Dr. Teed. As to the others, I can't say definitely whether Dr. Teed picked them up or not. I know he picked up more than one.

Q. How many other people in your store filled prescriptions for morphine during the months of January, February, March and April of this year?

A. Probably one; maybe two.

(Testimony of Percy M. Langs.)

Q. Who is the other one that you refer to?

A. J. H. Warrell and J. A. McFetter.

Q. Is Mr. McFetter here?

A. No, sir. He is in Coeur d'Alene.

Q. You referred to your retail price code mark. Will you indicate that on those which you yourself filled? [234]

A. Yes, sir. This one (indicating).

Q. Referring to No. 3? A. Yes, sir.

Q. Read that. A. 8043.

Q. What does that indicate?

A. The cost was \$1.75.

Q. For what? What does the prescription call for? A. Morphine sulphate, fifty of them.

Q. And the other one where you recognized the price mark?

A. This one is for morphine sulphate, forty. This is \$3.00. This indicates one thing to me.

Q. What does that indicate?

A. That that was not picked up by a private individual.

Q. But was picked up by whom?

A. By Dr. Teed.

Q. Was there a different price to Dr. Teed than to a customer in the retail trade? A. Yes, sir.

Q. Which was picked up by Dr. Teed?

A. This one (indicating).

Q. Exhibit 3. Do you find any more like that, that were picked up by Dr. Teed, or picked up by some person other than Dr. Teed?

(Testimony of Percy M. Langs.)

A. Frankly, the only way I can explain it, there being no [235] cost code on these two, is the fact that some one other than the person to whom they were made picked them up.

Q. Exhibits 15 and 16? A. Yes, sir.

Q. What does that indicate to your mind?

A. That some one other than Mike Sanders, to whom it was written picked them up, and——

Q. When do you put the cost code on it, when you are dealing with the patient or the customer?

A. That is what I am wondering. I don't know how these got here without a cost code on them.

Q. But those were filled?

A. Yes, sir; they must have been filled.

Q. How about those on which you said you recognized some one else's handwriting? Whose handwriting is it?

A. That was J. H. Warrell's.

Q. And the cost code is on that?

A. Yes, sir; it is on this, but not on this (indicating).

Q. Referring to Exhibit 2, what does it call for?

A. Dilaudid tablets 1/20th grain, twenty of them. The code cost is \$2.25.

Q. And the one which does not carry a cost code, Plaintiff's Exhibit 6, there is a date?

A. Yes, sir.

Q. And that was written by Mr. Warrell? [236]

A. Yes, sir.

Mr. Connelly: You may cross examine.

(Testimony of Percy M. Langs.)

Cross Examination

By Mr. Gleeson:

Q. When you testified regarding this one prescription on which the charge was \$1.75, you did not refer to the number of the exhibit. Can you tell me which that was. Evidently it was 1 or 3.

A. No. 3.

Q. That was \$1.75, and what did it call for?

A. Morphine sulphate hypodermic tablets, half-grain, fifty.

Q. And that was the one to Mike Sanders?

A. That is right.

Q. And that is the one you think Dr. Teed picked up personally?

A. That is my own opinion.

Q. The price indicates it? A. Yes, sir.

Q. Did he get a regular professional discount?

A. Yes; he does. Most doctors do at drug stores.

Q. I am not complaining. What would that have been to the customer?

A. On this same proportion probably about \$3.25 or \$3.50, maybe.

Q. And the other one for three dollars was—
Is that Exhibit [237] No. 1? A. No. 1.

Q. And that is for what?

A. Forty of the same morphine sulphate.

Q. One-half grain? A. Yes, sir.

Q. No. 2, there is a price on that?

A. Yes, sir.

Q. And what is the price?

(Testimony of Percy M. Langs.)

A. Two dollars twenty-five cents.

Q. Does that indicate a professional discount?

A. No, sir.

Q. What does that call for?

A. Dilaudid, grains 1/20th, twenty tablets.

Q. And the other one was six. Did that carry a cost price? A. No, it did not.

Q. And your position is, that was an oversight—That was not your regular practice?

A. It could have been an oversight or some one other than Velma Rock picked it up. Or Dr. Teed might have picked it up, but I can't understand why those three do not have the cost. That should be indicated.

Q. No. 6 calls for what?

A. Morphine sulphate hypodermic tablets half-grain, forty of them. [238]

Q. And 15, does that have the cost price on it?

A. It does not.

Q. What does that call for?

A. Morphine sulphate half-grain, fifty.

Q. And 16 has no cost?

A. No, sir. It was for the same as 15.

Q. Fifty half-grains? A. Yes, sir.

Q. Other than the price written on there, do you have any way of indicating whether it was delivered to Dr. Teed or to the individual to whom the prescription was issued? A. I have not.

Q. You were filling prescriptions over that period between January 1st and May 1st or July, of this year? A. Yes, sir.

(Testimony of Percy M. Langs.)

Q. And you filled other prescriptions under this Mike Sanders name, or is that all you have in the office?

A. I can't tell you definitely. I believe it is.

Q. You did make the selection of these prescriptions yourself from your own files?

A. No, sir. They were made from our files by the drug inspector.

Q. Some Federal Agent?

A. He left a receipt for them and picked them up.

Q. Do you know whether or not that is all the prescriptions [239] you have issued for narcotics to Mike Sanders or Velma Rock?

A. I don't know, but this man seemed to be very thorough in going through the files.

Q. You did not check it yourself?

A. No, sir.

Q. Do you know Mike Sanders?

A. No, sir.

Q. Have you ever seen him?

A. Not to my knowledge.

Q. Did you ever refuse to fill prescriptions issued to him for narcotics?

A. I don't know that I have.

Q. Is it not a fact you did on or about— During the month of April when prescriptions were delivered to you in the name of Mike Sanders by Velma Rock, you refused to fill them?

A. That might be.

Q. Do you recall what reasons you gave?

(Testimony of Percy M. Langs.)

A. Well, frankly, as far as Velma Rock is concerned, I believe that she was more or less typed or spotted among the druggists in Coeur d'Alene as being one who was abusing the use of this drug, and if she brought in one for Mike Sanders or anyone else, we would probably have refused her.

Q. Do you recall she did bring in prescriptions for Mike [240] Sanders?

A. I do not. I do recall turning down prescriptions she brought in. Whether they were made to Mike Sanders or some one else, I do not know.

Q. Do you recall when you turned them down?

A. Sometime during this period. I couldn't tell you exactly.

Q. After you refused to fill prescriptions she brought in, did she attempt to get you to fill prescriptions for narcotics?

A. Personally, I can recall only once of having turned her down.

Q. Did you give her any reason?

A. Yes, sir.

Q. What was the reason?

A. I was out of it.

Q. That was not true?

A. That was not true.

Q. Anyway, she took the hint and didn't come back? A. Not to my knowledge.

Q. Did you examine the prescription, what it called for and who issued it? A. Yes, sir.

(Testimony of Percy M. Langs.)

Q. Do you know it was issued by Dr. Teed?

A. Yes, sir.

Q. Do you recall whether he immediately thereafter came to [241] you with a prescription for narcotics and attempted to have it filled?

A. I don't believe he did after that.

Q. After you turned her down?

A. Yes, sir; that is right.

Q. He did not come back himself. Did he come back thereafter to get prescriptions filled for narcotics at any time?

A. Yes, he picked up these prescriptions for morphine sulphate. I do not know whether they came by his office girl or he brought them in, but I do know he did pick them up.

Q. Do you require some one to sign for them?

A. That is true on some narcotics.

Q. But on these you do not?

A. That is right.

The Court: Narcotics that do not require a prescription you have them sign for it, like luminol?

A. That is not a narcotic, it is a hypnotic. There are some that contain a little codein or morphine, in very small fractions that do not require a prescription, but we are required to keep a written record of those sales.

Q. (By Mr. Gleason) But for these this prescription is the only reference? A. Yes, sir.

Q. You number them as they are filled? [242]

A. Yes, sir.

(Testimony of Percy M. Langs.)

Q. What happens to a prescription you receive which you do not fill? Some stores number the as they receive them and others after they fill them?

A. Yes, sir.

Q. What happens to prescriptions you receive that you do not put your serial number on them?

A. They are not filled. They are turned to the customer. There are certain products that every store does not have. If a man brings in a prescription and we do not have it in stock, that prescription is merely kept there in a place accessible, and we try to obtain the merchandise. If we are unable to we return the prescription to the customer if he wants it.

Q. But it is not stamped with any serial number?

A. It is not.

Q. You were the manager of this store?

A. I am the owner of it.

Q. It would be the usual practice, or did you require of this man Warrell or Mr. McFetter that they refer to you for your approval any orders which may be for unusual amounts of narcotics?

A. Generally they do refer them to me.

Q. Were any of these referred to you, Exhibits 15 or 16?

A. I don't remember. I don't know. [243]

Q. Did either of these men refer to you for approval any of the Dr. Teed prescriptions for narcotics issued to either Velma Rock or Mike Sanders during this period?

(Testimony of Percy M. Langs.)

A. Yes, sir; I believe so. I believe about the first prescription that came in for Velma Rock—the date about the first of the year—I believe that was referred to me. No, I filled that. I can't tell you. I don't know.

Q. But you have a recollection some of those were referred to you?

A. Any prescription for narcotics when I am there is always referred to me, when it is for quite a quantity.

Q. What is quite a quantity?

A. Fifty is quite a few in some cases and in others it is not.

Q. The number of prescriptions you have for Mike Sanders for 190 tablets over that period was unusual?

A. That is right.

Q. That was called to your attention, was it?

A. Not until after they had gone out. I know in one instance—One man cannot be on shift all the time, and that is why we have registered men to cover both ends of the shift. If I am on shift and I am there, it is referred to me, and if I am not there it is up to the boys to use their own judgment, which they do to the best of their ability.

Q. Is it not a fact you were conscious of the fact that a large number of tablets were being prescribed for Mike [244] Sanders, and that caused you to refuse Shirley Doores or Velma Rock any further prescriptions?

A. I don't think it was that. It may have been.

(Testimony of Percy M. Langs.)

More particularly, as I have before stated, she was typed, and to my knowledge, at least, at the time I recall in particular turning her down she brought in the prescription herself.

Q. Did you discuss with Dr. Teed that you were being called upon to fill a large number of prescriptions for Mike Sanders?

A. Yes, sir; I did.

Q. Did you refuse to fill any more prescriptions for Mike Sanders for him?

A. I do not think it was necessary to refuse. We did not refuse to fill his prescriptions directly to the doctor. There is a limit, and when you get so many it causes you to wonder. We can make money without doing that.

Q. You did discuss it with him?

A. Yes, sir. I showed him the prescription file. I don't know whether there was more or whether this is the quantity. There may be others over there. The files are open and I asked Dr. Teed why there were so many, and he pointed to the reference to syphilitic ulcers, that the man was in a bad shape. With a patient suffering from hyphiletic ulcers or canecrs, that is extremely bad, and you will not let them suffer. [245]

Q. After you had this discussion with Dr. Teed did you fill any more prescriptions made out to Mike Sanders for narcotics?

A. That would be guessing again. I don't believe so.

(Testimony of Percy M. Langs.)

Q. You said a moment ago it was not necessary to refuse him. What did you mean by that?

A. You can talk to a man in a manner that——

Q. In that discussion did you tell him you would not fill any more for Mike Sanders?

A. I don't think I told the doctor that.

Q. In any event, you did not, after this discussion? A. That is right.

Q. Do you recall when that discussion was?

A. No, sir.

Q. Have you any way of fixing it?

A. Well, perhaps here are two dates that might help—on Exhibits 15 and 16 are the dates of April 6th and 8th, two that came very close together.

Q. There were fifty tablets on each day?

A. That is right.

Q. In other words, for a man to use 100 tablets in two days it would require some explanation for that?

A. I believe the excuse at that time was as given, that the doctor was going to Granite and he had a call up there and he would take him a supply to last him a while. These [246] were picked up by, I presume, the doctor. I remonstrated about these two coming so close together, and his excuse was, he was going up and the man needed it.

Q. As far as you know, the one on April 8th, that is when you remonstrated with him, and thereafter you never filled any more for Dr. Teed for Mike Sanders?

(Testimony of Percy M. Langs.)

Mr. Gleeson: That is all.

Examination by the Court

Q. Are narcotic prescriptions fillable outside the community where they are issued? Is that the practice among druggists?

A. No, sir. My understanding is, a doctor is registered and his registry number is only on file in the state where he resides or practices, and that a prescription written by Dr. Teed could have been filled legally only in Idaho.

Q. But you fill them when they do not involve narcotics? A. Yes, sir.

Q. On each of these prescriptions there is a registry number of the doctor, 1072, as in this case. That is his registry number, for narcotics, as I understand it, and it is granted to him in the state in which he practices, for narcotics? [247]

A. Yes, sir. If the prescription is not for narcotics it could be filled any place, not only in the United States but any place.

Redirect Examination

By Mr. Connelly:

Q. You said a numbering machine number indicates the prescriptions were all filled?

A. Yes, sir.

Mr. Connelly: That is all.

(Witness excused.)

M. W. MARKOSON,

called as a witness for the plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. What is your name?

A. M. W. Markoson.

Q. Where do you live? A. Coeur d'Alene.

Q. What is your business?

A. I am a pharmacist.

Q. What is the name of your store?

A. The Woodcock Drug Store.

Q. Do you know Dr. E. H. Teed? [248]

A. Yes, sir.

Q. How long have you known him?

A. I have been there two years.

Q. Have you filled any prescriptions for him?

A. Yes, sir.

Q. I will hand you Plaintiff's Exhibit 14 and ask you whether or not you recognize the handwriting on that prescription? A. Yes, sir.

Q. Whose is it? A. Dr. Teed's.

Q. And can you tell us who in your store filled this prescription? A. Yes, sir; I filled it.

Q. And for whom did you fill it?

A. Dr. Teed came in and got it himself.

Q. It is made out to whom?

A. Mike Sanders.

Q. And Dr. Teed came in and got it himself?

A. Yes, sir.

Q. What did you charge him for it?

(Testimony of M. W. Markoson.)

A. Three dollars.

Q. Is there anything to indicate that?

A. Yes, sir, right here (indicating).

Q. The price code? A. Yes, sir. [249]

Q. Three dollars? A. Yes, sir.

Q. And it is for dilaudid, grains 1/20th, tablets 100? A. Yes, sir.

Q. Do you have any numbering machine for stamping prescriptions in your drug store?

A. Yes, sir.

Q. And when do you use the numbering machine, when the prescriptions come in or when they are filled?

A. We number them when we fill them.

Q. Will you state whether or not Exhibit "14" if your number from your numbering machine is on it? A. Yes, sir.

Q. Do you recall any other prescriptions for narcotics for Mike Sanders that were filled by your store during the period December 30, 1943, to April 24, 1944? A. N, sir. That is the only one.

Mr. Connelly: You may cross-examine.

Cross Examination

By Mr. Gleeson:

Q. Were any other prescriptions offered to you for filling which you would not take for some reason? A. For him?

Q. Yes. [250] A. No, sir.

Q. For Mike Sanders or for Dr. Teed?

A. No. Mr. Woodcock told me not to fill any more after I filled this one.

(Testimony of M. W. Markoson.)

Q. How long after? A. That same night.

Q. What was the date of that?

A. April 3.

Q. And that night you received orders not to fill any more prescriptions for narcotics for Dr. Teed? A. Yes, sir.

Q. And you did not? A. No, sir.

Q. Were any offered to you? A. No, sir.

Q. Had you filled any for Dr. Teed issued to Mike Sanders prior to this date? A. No, sir.

Q. This is the only one in the files?

A. Yes, sir.

Q. Had you filled any for Dr. Teed for narcotics for any other individual over the period January 1st to May 1st? A. I don't know.

Q. Your orders covered prescriptions issued to Mike Sanders or anybody else? [251]

A. Yes, sir; any narcotics.

The Court: Any narcotic prescriptions for Dr. Teed? A. Yes, sir.

Q. (Mr. Gleeson) You say there is a code price on here? A. Yes, sir.

Q. And that price is how much?

A. Three dollars.

The Court: What is there?

A. RFX.

The Court: What does RFX mean?

A. That is \$3.00.

Q. (Mr. Gleeson) By the way, would this allow Dr. Teed a professional discount?

A. No, sir.

(Testimony of M. W. Markoson.)

Q. This is the regular retail price you charged customers? A. Yes, sir.

Q. Three dollars for these 100 tablets?

A. Yes, sir.

Mr. Gleeson: That is all.

Redirect Examination

By Mr. Connelly:

Q. What is dilaudid?

A. It is an opium derivative that they use for pain.

Q. Is that a patent name? [252]

A. That is the name of a drug, dilaudid.

Q. Is there any other narcotic in it than opium?

A. No, sir.

Mr. Connelly: That is all.

Re-Cross Examination

By Mr. Gleeson:

Q. How does it compare in strength with these other quarter or half-grains?

A. It would be about the same as the half-grain.

Q. 1/20th is about the same as a half-grain and 1/16th is what?

A. It would be a little stronger.

Q. A little stronger than a half?

A. Yes, sir.

Mr. Gleeson: That is all.

Mr. Connelly: That is all.

(Witness excused.)

ROY O. BARRY

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. What is your name? A. Roy O. Barry.
[253]

Q. Where do you live?

A. At 1111 North Howell Street.

Q. What is your business?

A. Wholesale druggist.

Q. With what firm?

A. McKesson & Robbins.

Q. How long have you been with that firm?

A. Off and on for thirty-three years.

Q. In what capacity were you employed by them in April of this year?

A. In the sales department.

Q. Will you tell us whether or not on April 24th this year you had a transaction involving the purchase of tablets of morphine with Dr. E. H. Teed of Coeur d'Alene? A. Yes, sir.

Q. Did you personally have that transaction?

A. Yes, sir.

Q. What was that transaction—what did it consist of?

A. It consisted of the purchase of 1000 morphine sulphate tablets, quarter-grain, and 1000 morphine tablets, half-grain, with Federal narcotic blank on Dr. Teed's personal blank.

(Testimony of Roy O. Barry.)

Q. Have you Dr. Teed's personal blank here?

A. I have.

Q. Will you produce it. [254]

A. Yes, sir.

(Hands to counsel.)

Q. Directing your attention to Plaintiff's Exhibit 38, please state generally what it is without reading any name or amount.

A. It is a Federal narcotic requisition for the purchase of narcotics.

Q. And in this instance whose signature does it bear? A. Dr. Teed's.

Q. Is there any of your handwriting on the identification? A. No, sir.

Q. The pencil writing, do you know whose that is?

A. I presume that was made out by the Collector of Internal Revenue when he made application for the blank. They come in a book form with so many blanks to the book.

Q. Is the date of the transaction indicated on the exhibit? A. Yes, sir.

Q. Is the price which you charged Dr. Teed indicated?

A. Not on that. I have it on our order blank.

Q. Will you produce that?

A. Yes, sir (handing to counsel).

Q. What is Plaintiff's Identification No. 39?

A. It is an order form we use to fill an order from in our order department.

(Testimony of Roy O. Barry.)

Q. Who is the purchaser indicated on this exhibit?

A. Wilson's Pharmacy, Coeur d'Alene, Idaho.
[255]

Q. What connection has that with the transaction which you have just testified about?

A. It has been the policy of our wholesale house not to trade directly with the medical profession. However, we are permitted under the law to honor a narcotic blank from the physician and to charge it to the retail drugstore with whom he trades.

Q. Who suggested the name of the Wilson Pharmacy at Coeur d'Alene?

A. I asked him what drugstore he wanted to charge it to, telling him we would not sell to the medical profession wholesale, and he said, "How about the Wilson Pharmacy?" and I said, "That is all right with me."

Q. Where is the Wilson Pharmacy?

A. At Coeur d'Alene.

Q. What was the amount you charged Dr. Teed and what was the quantity you sold him at that time?

A. I make out the order. I do not do the pricing. I wrote this order. The amount is on this invoice here that the pricing department put on it.

Mr. Connelly: I will offer Plaintiff's Exhibits 38 and 39 in evidence.

Mr. Smith: No objection.

The Court: They may be admitted. [256]

(Testimony of Roy O. Barry.)

(Whereupon, McKesson & Robbins Order Blank was admitted in evidence as Plaintiff's Exhibit 39; Federal Narcotic Requisition was admitted in evidence as Plaintiff's Exhibit 38.)

[Printer's Note]: Set out in full at page 71 of original certified transcript.

Q. (Mr. Connelly) Were the narcotics called for in the order form and the invoice delivered to Dr. Teed, or not? A. They were.

Q. In the quantity indicated on the order form?

A. Yes, sir.

Mr. Connelly: You may cross-examine.

Cross Examination

By Mr. Gleeson:

Q. I notice on the order form it says, "Waiting." That means Dr. Teed was waiting for the delivery? A. Yes, sir.

Q. And they were delivered to him at that time and place? A. Yes, sir.

Mr. Gleeson: That is all.

Mr. Connelly: That is all.

(Witness excused.)

(Ten-minute recess.) [257]

W. G. POOL,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. Will you state your name.

A. W. G. Pool.

Q. Where are you employed?

A. By the Old National Bank.

Q. In what capacity?

A. Assistant Auditor.

Q. How long have you held that position?

A. About two years.

Q. I will ask you to state whether or not as assistant auditor you have supervision or control of the individual deposit slips of your various depositors?

A. Yes, sir. We have access to them.

Q. In connection with the account of George T. Clayton, will you state whether or not you made a search for all of the deposit slips of that customer, George T. Clayton, between the dates of August 1, 1943, and July 1, 1944. A. I did.

Q. When did you make that search?

A. This morning.

Q. I hand you Plaintiff's Identifications 32 and 33 and a group of deposit slips designated as Plaintiff's Exhibit 36 [258] for identification, and ask you to examine them and state what they are.

A. These are deposit slips representing deposits made at various times during that time.

(Testimony of W. G. Pool.)

Q. To the account of whom?

A. George T. Clayton.

Q. Will you state whether or not those deposit slips before you—the three exhibits, 32, 33 and 36,—represent all of the deposit slips that you were able to find in your bank between the dates indicated, August 1, 1943, and July 1, 1944.

A. Yes, sir. They represent all that I was able to find.

Q. Can you state whether or not they represent all the deposit slips you have any record of in your bank for George T. Clayton between those dates?

A. There was shown on our film a deposit of August 10th of \$250 which I was unable to find.

Q. You were unable to find the slip?

A. A deposit slip similar to these.

Q. But it was shown on your film?

A. Yes, sir; on the monthly statements.

Q. Did you check these before you, Plaintiff's Exhibits 32, 33 and 36, with any other records?

A. The only other record we have is the film taken of the monthly statements. [259]

Q. Did you check these with that?

A. Yes, sir.

Q. And can you state whether or not, with the one exception you have indicated, Plaintiff's Exhibits 32, 33 and 36 represent all of the deposits to the account of George T. Clayton between August 1, 1943, and July 1, 1944?

A. That is right; with that one exception.

(Testimony of W. G. Pool.)

Mr. Connelly: I now offer Plaintiff's Exhibits 32, 33 and 36 in evidence, if the Court please.

Mr. Smith: We renew our objection on the same ground.

The Court: You have no cross-examination?

Cross Examination

By Mr. Smith:

Q. The missing deposit slip, for \$250, was for August 10, 1943? A. Yes, sir.

Mr. Smith: That is all the cross-examination.

The Court: The witness may be excused. I understand you have some other testimony to offer of a similar nature, and you will argue the admissibility of them at that time.

Mr. Connelly: Yes, Your Honor.

The Court: You may be excused, Mr. Pool.

(Witness excused.) [260]

Mr. Connelly: The auditor whom I have called is not here, and I will call Miss McHargue.

NORA McHARGUE,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. State your name, please.

A. Nora McHargue.

Q. Where do you live? A. Spokane.

(Testimony of Nora McHargue.)

Q. Where are you employed?

A. The Spokane Valley State Bank.

Q. In what capacity?

A. Bookkeeper and teller.

Q. How long have you held that position?

A. Approximately four years.

Q. I will ask you whether or not you have a record of payments on a real estate mortgage by one Nord to the Spokane Valley State Bank?

A. Yes, sir.

Q. Can you produce it?

A. Yes, sir (handing to counsel).

Q. State generally, without referring to any figures, what Plaintiff's Identification No. 40 is.

[261]

A. This is the liability card of one of our loans made at the bank, and it shows the principal payments and the balance and the dates the payments were made.

Q. What does this particular item refer to on this card, what type of transaction does it refer to?

A. The mortgage payments.

Q. Will you state when the final payment of the balance due on the mortgage indicated was paid?

A. May 18, 1944.

Q. And will you state the dates upon which preceding payments to the balance were made?

A. They were made monthly between the 20th and the last of each month.

Q. Are the dates indicated?

A. Yes, sir.

(Testimony of Nora McHargue.)

Q. Will you read the last four or five preceding the final payment.

A. January 29, 1944, March 1, 1944, March 27, 1944, April 25, 1944, and the final payment on May 18th.

Q. What was the amount of the final payment?

A. It is \$1,251.48.

Q. Do not answer this question. I am asking it for the purpose of the record. Who paid the final balance you have just referred to on that mortgage?

Mr. Smith: We object. [262]

Mr. Connelly: I wish to make an offer of proof, but for the purposes of the record I will ask another question.

Q. Do not answer this question, either, in order that counsel may have an opportunity to object and the Court may pass upon the admissibility of it. Who made the four payments preceding the final payment as shown on your card?

Mr. Smith: I object to that on the ground that it has no probative force in this case.

The Court: I will have to listen to this argument now. The jury may go to the jury room.

(The jury then retired to the jury room.)

The Court: In the absence of the jury and for the purpose of assisting the Court in passing upon the question of the admissibility of this evidence, I would like to have the witness answer those two questions. Who made the final payment?

A. George Clayton.

(Testimony of Nora McHargue.)

The Court: Who made the previous four pay-

A. George Clayton.

Q. (Mr. Connelly) Do you see George Clayton in the court room? A. Yes, sir.

Q. Do you know him? A. Yes, sir.

Q. Point him out. [263]

A. Sitting over there (indicating defendant).

Mr. Connelly: The Government offers to prove that on April 12th——

The Court: How much were these monthly payments?

A. Twenty-five dollars.

The Court: Did the mortgage have a final payment of \$1200? Was there a final payment due on that date?

A. It was a monthly-payemnt mortgage.

The Court: There was no omnibus payment at the end of it?

A. No, sir.

Mr. Connelly: The Government has offered to prove, if the Court please, that on April 12th, the defendant, George Clayton, deposited in the Old National Bank \$1000; that on May 1, 1944,——

The Court: One thousand fifty dollars.

Mr. Connelly: Yes. On May 1, 1944, he deposited \$2000. It is our contention that those deposits indicate the possession of more money by the defendant than his bank account at any other time within a substantial period before or after the delivery of the money by Dr. Teed to Shirley Doores, indicated. That is apparent from the other

(Testimony of Nora McHargue.)

deposit slips. Beginning on August 17th, and Your Honor will recall I asked the witness if he had made a search for deposit slips of the defendant beginning [264] August 1, and he said he did right down through to July, 1944. There were no deposits in August by the defendant until August 17th, when he deposited \$500, and there was no deposit in his bank account after that until September 7, 1943, when he deposited \$225. There was no deposit after that for three weeks until September 29, 1943, when he deposited \$145, and none after that until October 7th when he deposited \$150, and none thereafter until October 20th when he deposited \$256, and none following that until the 17th of November, when he deposited \$200. No other deposits in November, and none in December, until December 8th, when he deposited \$250, and thereafter on December 13th he deposited \$120; none until December 22nd, when he deposited \$88.48, and none after December 22nd until January 21, 1943—it is marked by the bank stamp and pencil, 1944,—a deposit of \$100. None after January 21st until February 1st, when he deposited \$442.24, and none after February 1st until February 11th, when he deposited \$259.84, and none after the 11th until February 24th, when he deposited \$120. On February 28th he deposited \$500. None thereafter in the month of March, if the Court please, and none in April until April 12th, when he deposited \$1050, and none thereafter in April until May 1st when he deposited \$2000, and none

(Testimony of Nora McHargue.)

after May 1st, if the Court please, until June 15th, when he deposited nine small items [265] totaling \$89

In connection with Plaintiff's Exhibit 40, and I will discuss them together, because they are under the same rule, and I think one lends force to the other— On May 18th there is a payment of \$1251.48 on the Spokane Valley State Bank mortgage, which later evidence will show, if it should become admissible, and I think it will, was on the home occupied by the defendant and his codefendant, Shirley Doores, which was bought subject to a mortgage given by a Mr. Nord to the bank.

Now, the financial condition of the defendant in the trial of any case involving the unlawful acquisition of money, becomes a material matter. I think that is the general and the broad rule. (Argument.)

The Court: Was this currency used in the payment?

The Witness: Yes, sir.

Mr. Connelly: Yes, the evidence will show it was paid in currency and not out of a bank account.

(Argument by counsel for the plaintiff and counsel for the defendant.)

The Court: I will overrule the objection and the witness may answer, and Plaintiff's Exhibits 31, 32, 33, 36 and 37 may be admitted, and the defendant is allowed an exception to the ruling. Bring in the jury.

(Whereupon, Plaintiff's Exhibits 32, 33, 36 and 37 admitted in evidence.)

(Testimony of Nora McHargue.)

(Plaintiff's exhibit 31 admitted in evidence.)

[Printer's Note]: Set out in full at pages 63-70 of original reporter's transcript. [266]

(The jury then took its place in the jury box.)

Q. (Mr. Connelly) Directing your attention to Plaintiff's Exhibit 40, which has been admitted in evidence——

The Court: No, you did not offer that.

Mr. Connelly: I beg Your Honor's pardon.

Q. Plaintiff's Identification 40, directing your attention to the item under date of 5/18/44, will you state the amount, what the date and the amount indicates.

A. On that date, May 18, 1944, the final payment of \$1251.48 was made on the principal.

Q. Will you tell us who made that payment to you? A. George Clayton.

Q. Do you see George Clayton here?

A. Yes.

Q. Point him out, please.

A. Sitting over there (indicating defendant).

Q. Who made the four preceding payments, preceding the final payment you have just testified about? A. Mr. Clayton.

Q. In what form was this final payment of \$1251.48 made to you? Was it by check or in currency?

A. In currency; in \$100 and \$50 bills.

(Testimony of Nora McHargue.)

Q. Do you have the legal description in the mortgage referred to on the identification?

A. I do not have the legal description of it, but I have the [267] house number on the insurance policy taken out with it.

Q. What is the house number?

A. It is 7225, Carlisle Avenue.

Mr. Connelly: At this time I offer Plaintiff's Exhibit 40 in evidence.

The Court: It may be admitted and an exception allowed.

(Whereupon, Liability Card of Spokane Valley State Bank admitted in evidence as Plaintiff's Exhibit 40.)

[Printer's Note]: Set out in full at page 74 of original reporter's transcript.

Q. (Mr. Connelly) What is the legal description of the property you have given the address of?

A. I do not have it.

Mr. Connelly: You may cross-examine.

Cross Examination

By Mr. Smith:

Q. Do you recall how the payments that were made prior to the one on May 18th were made?

A. In currency. Of course, I did not take all of the payments.

Q. All of the payments you ever received on that mortgage were in currency? A. Yes, sir.

Q. Mr. Clayton would come to the bank and make those payments in currency? [268]

(Testimony of Nora McHargue.)

A. Yes, sir.

Mr. Smith: That is all.

Redirect Examination

By Mr. Connelly:

Q. What did you do about releasing the mortgage when this final payment was made?

A. A release of mortgage was made out and it was delivered to Mr. Clayton that day.

The Court: Were the previous payments on the basis of monthly payments? A. Yes, sir.

The Court: And was the \$1251.48 due on May 18th, 1944?

A. No, sir. That was just the balance.

Q. (Mr. Connelly) Do you know how much longer this mortgage had to run on twenty-five dollar monthly payments from May 18th, 1944?

A. I would have to figure it out from the date the note was made.

Mr. Connelly: That is all.

(Witness excused.) [269]

JESSE S. BUCHHOLZ,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. State your name.

A. Jesse S. Buchholz.

(Testimony of Jesse S. Buchholz.)

Q. What official position have you with Spokane County? A. Deputy County Auditor.

Q. As such do you have custody and control of the books and records of deeds and mortgages and mortgage releases? A. Yes, sir.

Q. Have you Volume 505 of Deeds?

A. Yes, sir.

Q. Will you turn to it and open it at Page 503.

A. All right.

Q. Will you state whether or not on that page you have a record of a conveyance of property from one George W. Wesman and wife to George Clayton? A. Yes, sir.

Mr. Smith: May it be understood we have an objection to all of this?

The Court: Yes. The objection that was made goes to all of this testimony without repeating it, and the objection is overruled and an exception allowed to the defendant. [270]

Q. (Mr. Connelly) What is the nature of the instrument that was recorded?

A. A warranty deed.

Q. Read the description.

A. The East fifty-four feet of Tract 6 of the First Addition to Edgerton, as per map thereof recorded in Book "L" of Plats at Page 2 of the Book of Plats, in the office of the County Auditor of said county.

Q. Will you turn to Volume 510 of Deeds at Page 313.

(Testimony of Jesse S. Buchholz.)

Mr. Smith: What is the date of that instrument?

A. The date of the instrument is September 22, 1943.

Q. (Mr. Connelly) Will you turn to Volume 510 of Deeds and to Page 313. State whether or not it reveals a record of a deed for the same property you have referred to in the prior exhibit, the east fifty-six feet of Tract 6 of the First Edgerton Addition? A. The east fifty-four feet.

Q. Who is the grantor and the grantee?

A. George Clayton is the grantor and the grantee is Shirley Doores.

Q. What type of deed is it?

A. A warranty deed.

Q. And the date of that conveyance?

A. February 4, 1944.

Q. And the consideration named in the deed?
[271]

A. Is \$3000 and one diamond ring. No, one diamond ring valued at \$3000.

Q. Turn to the record of deeds Volume 514, page 3. State whether or not you have a recorded deed on that same property heretofore referred to on Page 3 of Volume 514 of deeds.

A. Yes, sir; the same property.

Q. And who is the grantor?

A. Shirley Doores.

Q. And the grantee?

A. The grantee is George Clayton.

Q. And the date?

(Testimony of Jesse S. Buchholz.)

A. The date is May 8, 1944.

Q. And the consideration?

A. Three thousand dollars.

Q. Will you turn to the book of Mortgages, Volume 503 at Page 442. State whether or not you have a mortgage recorded at that page on the same property heretofore referred to.

A. Yes, sir.

Q. And who is the grantor?

A. Hugo M. Nord and wife.

Q. And who is the mortgagee?

A. The Spokane Valley State Bank.

Q. What is the date of the mortgage? [272]

A. July 31, 1942.

Q. And the amount of the note and mortgage?

A. Represented by one note for the principal sum of \$1750.

Q. Will you turn to whichever volume you have the releases of mortgages in, Volume 512 of that series, at Page 463, and state whether or not you have a release of mortgage, the mortgage you have just referred to in the preceding testimony.

A. Yes, sir.

Q. What is the date of the release of that mortgage?

A. The date of the release is May 18, 1944.

Q. And by whom was it executed?

A. By the Spokane Valley State Bank by C. A. Buckland as its vice-president.

Q. Are all of the books from which you have

(Testimony of Jesse S. Buchholz.)

read official records of the County Auditor of Spokane County? A. They are.

Mr. Connelly: I wish to offer the pages from which she has read in evidence, if the Court please, although I doubt if it is necessary.

The Court: I do not see any necessity of it.

Mr. Connelly: Maybe the rule of the best evidence would require it, but I am willing to stand on the oral testimony.

The Court: You haven't reached that question. [273]

Mr. Smith: Oh, no, Your Honor. The only objection is the principal objection. We do not ask him to leave the County Auditor's books here. That would not be right.

Mr. Connelly: That is all.

Cross Examination

By Mr. Smith:

Q. Will you turn to the first volume, 505, of Deeds. What is the consideration recited in that deed from Wesman to Clayton?

A. One thousand five hundred dollars.

Q. Does it show the consideration was more than \$1,500 from the revenue stamps attached?

A. It shows it was \$1500—\$1.50 state tax and \$1.65 Federal tax—10 cents higher.

Q. Will you state whether or not the volume also shows that the grantee in the deed, George Clayton, was taking it subject to an existing encumbrance of record.

(Testimony of Jesse S. Buchholz.)

A. Subject to encumbrances of record and also subject to assessment for Orchard Avenue Irrigation District and to assessments by Spokane Valley Fire Protection District No. 1.

Q. And does it refer specifically to the mortgage that was on the property by book and page?

A. No, sir. [274]

Q. Now, will you take Volume 503, please, at Page 442. Does that mortgage recite that \$1750 is the total consideration, the total amount?

A. It says, "Represented by one note by the mortgagor to the order of the mortgagee," and then it gives the payments by the month and for the principal sum of \$1750 with interest thereon at the rate of six per cent per annum payable monthly.

Mr. Smith: That is all.

Mr. Connelly: That is all.

(Witness excused.)

GEORGE CAMPBELL,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. What is your name?

A. George Campbell.

Q. What is your business?

A. Pratt's Furniture.

(Testimony of George Campbell.)

Q. State whether or not during the month of April this year you had any transaction involving the sale of furniture with Shirley Doores or Shirley Clayton. A. Yes, sir.

Q. Have you any record of that transaction?
[275]

A. Yes, sir.

Q. What is Plaintiff's Identification No. 41?

A. I was the delivery man in this case.

Q. What did you deliver and to what address?

A. A davenport and a chair.

Q. What was the value of it?

A. Two hundred seventy-nine dollars fifty cents, and the tax.

Q. How was it paid?

A. C.O.D. on delivery.

Q. Who paid it?

A. The Mrs. She turned in an old davenport and chair and paid me \$260 in cash.

Q. A cash or check? A. No, sir, cash.

Mr. Connelly: I offer it in evidence.

Mr. Smith: We object to it as being incompetent, irrelevant and immaterial and not proving or disproving any issue in this case, as far as the defendant is concerned.

The Court: It may be admitted.

(Whereupon, Pratt's Furniture Invoice admitted in evidence as Plaintiff's Exhibit 41.)

[Printer's Note]: Set out in full at page 75 of original reporter's transcript.

(Testimony of George Campbell.)

Q. (Mr. Connelly) On what date was that transaction? A. April 10th.

Q. 1944? [276] A. 1944.

Mr. Connelly: That is all.

Mr. Smith: That is all.

(Witness excused.)

WAYNE BEZONA,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. State your name, please.

A. Wayne Bezona.

Q. What official position do you hold with the United States Government at Spokane?

A. United States Marshal for the Eastern District of Washington.

Q. Did you hold such position in May of this year? A. I did.

Q. Will you state whether or not during the month of May, on or about the 25th or 26th of May, this year, you had occasion to see or take into custody Shirley Doores? A. I did.

Q. Do you recall the date?

A. I don't recall the date of her being taken into custody.

Q. Will you tell us whether or not you recall

(Testimony of Wayne Bezona.)

being in my office with Shirley Doores, or when Shirley Doores was [277] there, about the 26th or 27th of May? A. Yes, sir.

Q. Will you relate what you can remember of the conversation there between Miss Doores and myself—in the first place, how did she happen to be in my office, do you know?

Mr. Smith: At this stage of this case we object to this testimony. It is incompetent, irrelevant and immaterial under the rules.

The Court: On what ground?

Mr. Smith: Any statement or declaration after arrests are not admissible.

The Court: You allege this conspiracy ended on May 25th, and statements by an alleged conspirator made afterwards is only admissible as against the conspirator making it.

Mr. Connelly: I am aware of that rule. I think the rule is properly invoked. Even though I am sure it was on the 25th the lady was in custody and the conspiracy had ended, but I did not ask the question primarily for that purpose. It is only preliminary to show why she was there, but I will not go into any conversation with her, Mr. Bezona.

Q. After you left my office that day——

Mr. Smith: Maybe we can save some time. Judging from counsel's opening statement, certain things were said [278] and certain acts were done, and I think the acts are likewise barred, except against the person performing the act, and Miss

(Testimony of Wayne Bezona.)

Doores having pled guilty, there is nothing before the Court.

Mr. Connelly: My statement was about the recovery of the money.

The Court: I do not understand the rule that way. My understanding of the rule is, statements made during the time of the conspiracy may not be considered by the jury in determining the question of conspiracy, but after they determine a conspiracy has been in existence, then they may consider them as against the defendant. Statements made after the termination of the alleged conspiracy are not admissible except as against the individual making them. Shirley Doores is not now on trial, but I do not understand it goes to the extent of excluding acts after the alleged conspiracy has terminated.

Mr. Gleeson: Unless in the presence of and acquiesced in and not denied by the alleged conspirator sought to be bound.

Mr. Connelly: That is not the rule.

The Court: I do not understand that to be the rule. The rule is a hearsay rule. Ordinarily a statement by one defendant is not binding on another defendant unless in the presence of the defendant on the ground it is hearsay, [279] but in conspiracy there is an exception to that rule which permits the admission of such testimony, but there is no question of hearsay involved in acts.

Mr. Gleeson: Of course, I do not have the rule before me. I can lay my hand on it, but I haven't it right now.

(Testimony of Wayne Bezona.)

The Court: I do not want to make a mistake about it. If you want to argue it I will be glad to hear from you.

Mr. Gleeson: I recognize I might be mistaken, but that is the way I read it and I am positive I am right about it.

The Court: Have you another witness?

Mr. Connelly: One man is on his way here. He is a very short witness.

Mr. Smith: We want to recall Wesley Doores before you rest.

The Court: Recall him now. You can step aside, Mr. Bezona.

(Witness excused.) [280]

WESLEY DOORES

recalled by Defendant for further cross-examination, further testified as follows:

Cross Examination

By Mr. Smith:

Q. You are the same Wesley Doores who has heretofore testified in this case? A. I am.

Q. You are a brother of Shirley Doores?

A. That is right.

Q. And likewise a brother of Robert C. Doores?

A. That is right.

Q. Did Ed Kelly give you 100 quarter or half-grain morphine tablets about the 16th of May, or shortly thereafter?

(Testimony of Wesley Doores.)

Mr. Connelly: I object as being repetition. I never asked him that.

Mr. Smith: I withdraw it. I thought you had.

The Court: He testified he only had one shot of morphine since 1941, and that was on the 17th of May.

Mr. Smith: That is right. He got that from Dr. Teed.

The Court: The objection is overruled.

A. No, sir; he didn't give me any morphine.

Q. (Mr. Smith) At any time between that date and the date of your arrest?

A. He did not. [281]

Q. You were arrested on the 25th day of May, were you not?

A. I was arrested on the 4th of June.

Q. And at the time of your arrest you were where? A. In Montana.

Q. How long had you been in Montana at that time?

A. I had been there since about the 29th of May, I believe, or the 28th.

Q. How long prior to that time had you been in Montana?

A. I was over there when my brother died.

Q. When was that?

A. I believe it was along about the 12th of March.

Q. The 12th of March?

A. I could be mistaken. It was in March sometime.

(Testimony of Wesley Doores.)

Q. March, 1944? A. Yes, sir.

Q. And when were you in Montana prior to that time?

A. I never was over there prior to that.

Q. You came to Spokane, I believe you testified, in October, 1943?

A. That is right.

Q. And you remained in Spokane from October, 1943, until sometime in the month of March, 1944, when you went to Montana on account of the death of your brother? A. That is right.

Q. To what place in Montana did you go? [282]

A. Billings.

Q. Did you stay in Billings all the time?

A. I did.

Q. You were not at any other city or town in Montana in March?

A. I never stopped at any. I went through several.

Q. But you did not stop in any? A. No.

Q. That is where your brother lived?

A. Yes, sir.

Q. You were not over there in the month of February at any time? A. No, sir.

Q. Handing you Defendant's Exhibit for Identification "B," I will ask you to examine that and state in whose handwriting it is.

A. That is my handwriting.

Q. After examining that document do you still want to say you were not in Montana on the 2nd of February, the date that bears?

(Testimony of Wesley Doores.)

A. That could have been wrote when I was there in March.

Q. From Manhattan, Montana?

A. Yes, sir.

Q. Were you staying at your brother's house?

A. My brother has no house over there.

Q. Where were you staying when you were there in March? [283]

A. I stayed at the hotel at Billings.

Q. What did you mean, then, when I asked—when you gave your address as 401 North Black Street, Bozeman, Montana, care of Lee Ping?

A. I figured on stopping there.

Q. You thought you would stop there and see Lee Ping on the way back? A. Yes, sir.

Q. Is Lee Ping a gentleman of Chinese ancestry?

Mr. Connelly: I object as not proper cross examination.

The Court: That would be rather obvious.

Q. You say that letter could have been written while you were over there in March, at the time of the death of your brother? A. Yes, sir.

Q. But it is dated February 2nd?

A. I couldn't be too sure it was in March. I would have to look it up. I could look it up and tell you exactly when I was there when he died.

Q. That is the reason you went over there?

A. That is the reason, yes, sir.

Q. How long have you known Lee Ping?

A. Several years.

(Testimony of Wesley Doores.)

Q. What does he do? [284]

A. He is a bartender there.

Q. Is he a Chinaman?

A. He is a white man.

Q. And his name is Lee Ping?

A. That is right.

Mr. Smith: We offer in evidence defendant's Exhibit for Identification "B."

Mr. Connelly: It is objected to as not competent, relevant or material to any issue in this case, and if it is offered for the purpose of impeaching the testimony of the witness as to the date when he was in Montana, I object to it on the ground it is an attempt to impeach on a collateral matter.

Mr. Smith: It is not offered for that purpose. It is offered on another impeaching matter as well.

The Court: What is it?

Mr. Smith: I am speaking in the presence of the jury.

Mr. Connelly: I do not know what you are going to say. I will not give you any free rein to make any statement.

Mr. Smith: I am not trying to take any free rein. That is the reason I said what I did. I can approach the Bench or tell you here.

The Court: Go ahead. [285]

Mr. Smith: This witness testified when he was on the stand before he had certain conversation with the defendant Clayton in Moore's pool room about the first of February; he said the first or second day of February, and it is offered for a

(Testimony of Wesley Doores.)

further purpose. The matter I am referring to is where this witness testified about the first of February he was in Moore's pool hall and Clayton pointed out a tall, dark-complected individual, and said, "That is the fellow I had propositioned to go to Coeur d'Alene, but he wouldn't go, because he didn't have any federal badge and credentials."

Mr. Connelly: I object to the exhibit as improperly identified for the purpose of impeachment or for any purpose.

The Court: Are you sure about the first of February? My notes show January.

Mr. Smith: I am pretty sure of that point, Your Honor.

The Court: It is admissible if he said the first of February.

Mr. Smith: We can ascertain that later from the record, if the Court please. I withhold the offer.

The Court: On the other ground I do not think it is admissible, as it is on a collateral matter.

Mr. Connelly: This witness has not identified this [286] exhibit as to date, but quite to the contrary.

The Court: This is cross-examination, and he said he wrote it, and he has the date of February 2nd on it.

Mr. Connelly: But he said he might have written it in March.

The Court: That will be a question for the jury. I will withhold a ruling until Mr. Ridenour checks his notes.

(Testimony of Wesley Doores.)

Q. (Mr. Smith) After your arrest where were you confined?

A. At the county jail in Butte.

Q. After you were returned to Spokane where were you confined?

A. The county jail in Spokane.

Q. How long were you in the county jail at Spokane?

A. Oh, I believe around four months, or four months and a half.

Q. During that time were you and the defendant, Ed Kelly, in the same cell at any time?

A. I believe I and Ed Kelly were in the same cell the last week I was in jail.

Q. Were you not in the same cell for fifty or sixty days? A. No, sir.

Q. Or in the same cell block? A. No.

Q. Were you not in a cell block situated so you could com- [287] municate with each other by voice? A. No, sir.

Q. But you were together for a week?

A. The last week, yes, sir.

Q. You were called as a witness before the grand jury? A. I was.

Q. And you testified before the grand jury?

A. I did.

Q. And the grand jury returned a not-true bill as to you? A. So the papers said.

Q. That is all you know about it?

Mr. Connelly: The record would be the best evidence.

(Testimony of Wesley Doores.)

Mr. Smith: Have you got the record, Mr. Clerk?

The Court: There is no question about it, is there?

Mr. Connelly: I do not recall a not-true bill against this man.

Mr. Smith: I would like to know whether no bill was returned, or a not-true bill was returned.

The Court: Was he in jail?

Mr. Connelly: Yes, sir.

The Court: The grand jury would have to return a not-true bill when a man is in jail unless they indicted him.

Mr. Connelly: He was in jail, but I cannot say without referring to the record. [288]

The Court: Go in and ask the clerk, and we will not argue about it.

Q. (Mr. Smith) While they are getting the record, you stated, I believe, you had one shot of morphine since 1941, and that was in May when you went up to Coeur d'Alene?

A. That is right.

Q. With this letter signed "Graven"?

A. That is right.

Q. And that letter signed "Graven," do you recall it? A. I don't believe I would.

Mr. Connelly: I object as not proper cross-examination.

Mr. Smith: The letter was not in evidence when he testified before.

Mr. Connelly: He did not testify about it.

The Court: You may ask him.

(Testimony of Wesley Doores.)

Q. (Mr. Smith) Handing you, now, Defendant's Exhibit "A," that is the letter you took to Dr. Teed, is it not?

A. That is right. I believe it is. I couldn't say for sure.

Q. In whose handwriting is it?

A. It looks like Kelly's.

Q. You got Kelly to give you this letter?

A. Yes, sir; I asked him.

Q. You asked him to sign it?

A. He signed it. [289]

Q. Did you tell him what to put in the body of the letter? A. Not that I remember.

Q. Did you go up there on the day the letter bears date— Did you notice the date?

A. I didn't notice the date.

Q. May 24th.

A. I couldn't say for sure about the date.

Q. As you recall now, the letter in question you took up to Dr. Teed was not given an advance date, was it?

A. I don't remember whether it was or not.

Q. What time was it that you were in Dr. Teed's office on the day you presented it to him?

A. I would say sometime around in the afternoon.

Q. Can you give us any better time than sometime in the afternoon?

A. As near as I remember it was in the afternoon.

(Testimony of Wesley Doores.)

Q. Early afternoon, middle afternoon, or late afternoon? A. I couldn't say for sure.

Q. How did you go to Coeur d'Alene?

A. On the bus.

Q. Did you go alone? A. Yes.

Q. Do you remember what time you left Spokane? A. No, I don't.

Q. Can you say whether late in the afternoon or early in [290] the afternoon?

A. It could have been in the morning. I wouldn't say one way or the other, because I don't remember.

Q. Did Dr. Teed ask you if your name was Emory, as indicated in the letter? A. He did.

Q. Did you give him your name as Emory?

A. I did.

Q. How was this shot administered?

A. Hypodermically.

Q. Will you describe what was done?

A. Just like any doctor would give you a hypodermic.

Q. I never had one. Will you state what he did?

A. He puts it in a syringe and gives it to me.

Q. Where did he give it to you?

A. In the arm.

Q. Which arm did he give it to you in?

A. The right arm, I believe.

Q. He inserted the needle up here some place in your right arm (indicating)? A. Yes, sir.

Q. And injected the solution of morphine sulphate in water? A. Yes, sir.

(Testimony of Wesley Doores.)

Q. Do you know how large a dose he gave you?

A. I don't remember. [291]

Q. What did he charge you for it?

A. I don't remember what I did pay him for it, two or three dollars; whatever an office call was.

Q. Did you see him mix it up?

A. No, sir; I didn't see him mix it up.

Q. He went out in another room to mix it up?

A. He mixed it right there, but I didn't pay any attention. I could see him in the other room.

Q. And then he brought it out and inserted the needle in your arm and gave you a shot?

A. Yes, sir.

Q. That was the only shot you had during that period of time? A. Yes, sir.

Mr. Connelly: I object as repetition.

The Court: Overruled.

Q. (Mr. Smith) In 1941, were you a narcotic addict? A. I had used it off and on.

Q. Did you have the habit?

A. At one time, yes.

Q. Where were you living then?

A. Here in town.

Q. What happened in 1941 that you quit using it?

A. Well, I just quit. I couldn't get it, and I took the cure.

Q. And that was when you went down to the penitentiary? A. Yes, sir. [292]

Q. You went to the penitentiary and took the cure?

(Testimony of Wesley Doores.)

A. Yes, sir. I was in the penitentiary and I had to take the cure while I was there.

Q. And you were released by the penitentiary last July? A. July, 1943.

Q. I mean July, 1943. A. That is right.

Mr. Smith: May I read this into the record?

Mr. Connelly: I object to it as not competent, relevant or material to any issue in this case, and not proper cross-examination.

The Court: What is its relevancy?

Mr. Smith: The fact the witness testified before the grand jury and a not-true bill was returned as to him.

Mr. Connelly: I still object to it as having no relevancy.

The Court: I do not think it is relevant.

Q. (Mr. Smith) While you were in jail and before you testified before the grand jury, did you have a document consisting of a statement of your testimony in the case? A. I did not.

Q. You never at any time had such a document?

A. I never did.

Q. Your brother Robert E. Doores is here?

A. Yes, sir. [293]

Q. When did he come to Spokane, do you remember?

A. Oh, a couple of weeks ago, I believe.

Q. Had you sent for him? A. No, sir.

Q. Did you know he was coming?

A. I did not.

(Testimony of Wesley Doores.)

Q. From anything he has said to you, do you know whether anyone else had sent for him?

A. I couldn't say about that.

Q. He has not said anything to you about that?

A. No, sir; he didn't say anything to me about anybody sending for him.

Q. When he came to Spokane where did you see him first?

A. At the hotel where I am staying now, the Pacific Hotel.

Q. Did he stay with you a while?

A. He stayed a couple or three nights with me.

Q. And later did he get a room by himself?

A. Yes, sir.

Q. Did you discuss this case with your brother, Robert? A. Well, no.

Q. No? At any time? While he was staying with with you or since he has been here?

A. He tried to discuss it several times, but I wouldn't say nothing about it.

Q. I am going to ask you some questions, Mr. Doores, and I [294] wish you would pay particular attention to the questions. I will ask you to state whether or not during the time that your brother was here you and he talked about this case, and he said to you all he knew about the case was some articles that he had seen in the papers? Did he say that?

Mr. Connelly: I object as being incompetent, irrelevant and immaterial.

(Testimony of Wesley Doores.)

The Court: And not proper cross examination?

Mr. Connelly: Yes.

The Court: I will sustain the objection.

Q. (Mr. Smith) I will ask you to state whether or not your brother, Robert Doores, asked you how George Clayton got mixed up in the case, and just what part in the deal he had, what part he played, and if you did not laugh and state to him that George did not play any part?

Mr. Connelly: That is objected to unless the time and place are stated.

The Court: I will sustain the objection. It is not sufficient in form to lay the grounds for impeachment. In laying the ground work for impeachment you must fix the time, the place and the persons present.

Q. (Mr. Smith) Having in mind the question I just asked you, the time when this statement was made, or these statements or this conversation occurred between you, was within the [295] first three days your brother was here, at the Pacific Hotel, either in your room or his, and that just you and he were present?

Mr. Connelly: I object as too indefinite, and not sufficient information in the question.

The Court: I will sustain the objection.

Mr. Smith: I will have to get further information before I can ask the question.

The Court: Yes. The rule is pretty technical.

Mr. Smith: I will reserve the right to recall him later.

(Testimony of Wesley Doores.)

The Court: Yes. Any questions?

Mr. Connelly: Not at this time.

(Witness excused.) [296]

W. P. SOTH,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. State your name. A. W. P. Soth.

Q. What is your business?

A. I am office manager of the Barton Auto Company.

Q. Do you know Shirley Doores?

A. No, I don't know her.

Q. Did you ever see her?

A. Since I have been here.

Q. Did you have any business transaction with her? A. The company sold her a car.

Q. Did you have anything to do with it?

A. No, sir; I did not.

Q. Did you handle the deal? A. No, sir.

Q. Who did? A. Mr. Heglar.

Mr. Connelly: I have made a mistake, then. That is all.

(Witness excused.) [297]

GEORGE HEGLER,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. Please state your name.

A. George Heglar.

Q. What is your position with the Barton Auto Company?

A. Used-car manager and one of the stockholders.

Q. State whether or not you had a transaction in which a car was sold to Shirley Doores.

A. I sold her a car.

Q. When?

A. On the 4th day of May of this year.

Q. What type of car?

A. An Oldsmobile 8, a 78, we call it.

Q. Have you a record of the transaction?

A. I have.

Q. What is Plaintiff's Identification No. 42?

A. That is when the license was transferred to W. E. Doores.

Q. On what date did you have the transaction with her?

A. It was two days before this sheet was made out. That was when she purchased the car. She didn't have any money at that time.

Q. What date was that?

A. That would be the 2nd of May. [298]

Q. Two days before the 2nd of May?

(Testimony of George Hegler.)

A. No, sir; it would be the 2nd of May.

Q. When she bought the car how did she pay for it? A. In \$100 bills.

Q. How much?

A. She paid seventeen \$100 bills and the car was \$1,644.10, and I gave her the change out of the \$100 bill.

Mr. Connelly: You may cross-examine, and I offer Exhibit 42 in evidence.

Mr. Smith: It is subject to the same general objection we have made.

The Court: It may be admitted and an exception allowed.

(Whereupon, Barton Auto Company Invoice admitted in evidence as Plaintiff's Exhibit 42.)

Mr. Connelly: You may cross-examine.

Mr. Smith: That is all.

(Witness excused.)

SAMUEL D. SMITH,

was called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. What is your name?

A. Samuel D. Smith. [299]

(Testimony of Samuel D. Smith.)

Q. You are a special agent of the Federal Bureau of Investigation? A. I am.

Q. Did you have anything to do with the investigation of this case? A. I have.

Q. Did you have charge of it? A. Yes, sir.

Q. Do you know Shirley Doores? A. I do.

Q. I will ask you to state whether or not you had any conversation with Shirley Doores in reference to her being a married or a single woman?

Mr. Smith: I think the time should be fixed.

Q. (Mr. Connelly) When was this?

A. Well, it was before she was released on bond. That particular day I don't remember. I saw her three or four times from the time she was brought back from Coeur d'Alene until she was released. It was one of the times I talked to her, and she told me——

The Court: No, no. I will sustain the objection.

Mr. Connelly: That is all.

(Witness excused.) [300]

Mr. Connelly: I will call Shirley Doores.

The Court: The jury may retire to the jury room for a minute.

(The jury then retired to the jury room.)

The Court: You may call Shirley Doores now.

SHIRLEY DOORES

was called, and after being first duly sworn, testified as follows:

The Court: Your name is Shirley Doores, and you are one of the defendants in this case?

Shirley Doores: Yes, sir.

The Court: And you entered a plea of guilty?

Shirley Doores: Yes, sir.

The Court: The government has called you as a witness. I am instructing you that you do not need to testify as to any matter which might involve you in a criminal charge. That does not mean you would have not have a right to testify if you so desire.

Mr. Connelly: I do not intend to ask this witness more than one question.

The Court: What question do you want to ask her?

Mr. Connelly: "Are you married to George Clayton?" I do not intend to go into the merits of the charge. That is the only question I intend to ask her.

The Court: I do not think that would involve her [301] unless you asked if they lived together as husband and wife. Mr. Gleeson, you represent this woman.

Mr. Gleeson: Miss Doores will probably be called as a witness. We are unable to determine that until the conclusion of the government's case. Whether she will or will not, I am not in a position to say. The evidence as it now stands, there has been some inference, at least, by a lady out

(Testimony of Shirley Doores.)

there, who lived as a neighbor, Mr. Connelly attempted to show through her that Miss Doores and Mr. Clayton were living there at the house next door, and he didn't go any further than that. It is the Court's purpose to advise her that she need not testify to any matter that might incriminate her, and you have a right to refuse to testify to that if you desire, or to testify, but particularly you have a right not to testify to anything that might incriminate you in any way. In other words, if you were living with George Clayton as his wife, and were not married to him, that would be evidence of a crime, with which you are not charged, but which might be charged by some other authority or in some other cause, and you need not testify to that unless you see fit.

Shirley Doores: I will ask you what you think I should do.

Mr. Gleeson: I cannot advise you to testify to anything that would incriminate yourself. You will have [302] to do that of your own volition.

Shirley Doores: Would that question be asked me?

Mr. Gleeson: Mr. Connelly is going to ask it.

Shirley Doores: If I was a witness for Clayton would that question be asked me?

Mr. Gleeson: Yes. It is not understood yet whether you will be a witness. I understand you are willing to be a witness, but no demand has been made on you. You are willing, but not request has been made?

(Testimony of Shirley Doores.)

Shirley Doores: Yes.

Mr. Gleeson: I cannot say whether she will testify or not, and I cannot advise her to testify on my own part. It is the admission of a crime for which she might later be charged. It is a matter of little consequence.

Mr. Connelly: I have a different view of that, and I have a different purpose in asking the question.

The Court: The thing I must do is to advise you of your rights, and you can make up your own mind.

Shirley Doores: I would rather leave it that way. I don't understand much about law, and I wouldn't really know.

The Court: You cannot leave it up to Mr. Connelly.

Shirley Doores: I am guilty.

Mr. Gleeson: I cannot so advise you. If you want my advise, I would have to tell you not to testify to [303] anything that might incriminate you, unless you are compelled to do so. You can tell the Court whether or not you intend to follow my advice.

Shirley Doores: If it is not incriminating, I don't see any reason it would hurt to answer the question.

Mr. Gleeson: I am only advising you not to testify to anything that is incriminating.

Shirley Doores: I will not testify, then.

The Court: You will not answer the question?

Shirley Doores: No, not right now.

(Testimony of Shirley Doores.)

The Court: That is the only question that will be asked you. Bring in the jury and ask the question. You can answer that you refuse to testify, on the ground it might tend to incriminate you.

(The jury then took its place in the jury box.)

Direct Examination

By Mr. Connelly:

Q. Your name is Shirley Doores?

A. Yes, sir.

Q. And you are one of the defendants in this case.

A. I am.

Q. Have you ever been married to George Clayton, the other defendants?

A. No.

Mr. Connelly: No further questions.

Mr. Smith: No questions at this time.

(Witness excused.) [304]

W. G. GRABEN,

called as a witness for the plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. State your name.

A. W. G. Graben.

Q. Where do you live?

A. Seattle, Washington.

Q. What is your business or employment?

A. I am a narcotic inspector of the United States Bureau of Narcotics.

(Testimony of W. G. Graben.)

Q. How long have you held that position?

A. I am on my 20th year.

Q. How long were you located at Seattle in that work?

A. I am on my 11th year.

Q. Did you ever know prior to the occurrence involved in this trial the defendant Shirley Doores?

A. Yes, sir.

Q. Did she know you by name?

A. She did.

Q. Where and when was that?

A. I think I have known her for perhaps six or seven years. She always referred to me with the letter "V" instead of the letter "B."

Q. As Graven? [305] A. Yes, sir.

Q. When she spoke to you? A. Yes, sir.

Q. Is there a Mr. Bangs in your department?

A. Bangs was District Supervisor until about a month ago when he was transferred to Denver.

Mr. Connelly: That is all. You may cross-examine.

Mr. Smith: No questions.

The Court: The jury may be excused until 1:15 o'clock tomorrow afternoon.

(Whereupon an adjournment was taken until the hour of 1:15 o'clock p. m., December 8, 1944, at which time all parties being present as heretofore, including all the jury, the trial was resumed as follows, to-wit:)

Mr. Smith: In connection with the offer in evi-

(Testimony of W. G. Graben.)

dence of Defendant's Exhibit B, I have the reporter's transcript, (handing to the Court).

The Court: I think I will let you put it in in view of the conversation that ensued yesterday.

Mr. Smith: May I read both of them to the jury, then, at this time?

The Court: Yes.

(Whereupon, Extracts of Testimony admitted in evidence as Defendant's Exhibit B, and read to the jury by Mr. Smith.)

[Printer's Note]: Set out in full at page 81 of original reporter's transcript.

Mr. Smith: Does Your Honor want the testimony attached to the exhibit?

The Court: I do not think it is necessary.

Mr. Smith: It is quite all right.

The Court: All right; attach it.

Mr. Smith: I would like to have Bunny Doores recalled. [307]

WESLEY DOORES

recalled as a witness for the Plaintiff, further testified as follows:

Cross Examination

By Mr. Smith:

Q. You are the same Wesley Doores who has testified in this case? A. I am.

Q. What room did you occupy in the Pacific Hotel in the month of November, 1944?

(Testimony of Wesley Doores.)

A. 451, I believe, or 452.

Q. Specifically, about the 18th of November what room did you occupy.

A. Well, I didn't really occupy any. Clayton had that room rented under his name.

Q. The room was what number?

A. 451 or 2, I am not sure.

Q. Are you sure it was not 248?

A. Of this year?

Q. Of November, this year.

A. Oh, yes; this year.

Q. I am not talking about last year.

A. Yes, sir; this year.

Q. Your room was 248?

A. That is right.

Q. Do you recall the time when your brother, Robert Doores, [308] came to your room?

A. I do, yes.

Q. And what day was that?

A. Well, I couldn't say for sure what day it was.

Q. Would November 18, 1944, be approximately the date?

A. It could be around there, I guess.

Q. What time of day did he come?

A. He come around 12:00 or 1:00 o'clock the night he come the first time.

Q. Do you know whether or not he tried to get a room in the hotel and he could not get a room because they were full?

A. That is right.

Q. Did you ask him to stay with you that night?

(Testimony of Wesley Doores.)

A. I did.

Q. Did he stay with you in room 248?

A. He did.

Q. Had you been at work that afternoon or evening?

A. Yes, sir.

Q. What shift were you working?

A. I was working the swing shift, 2:48 to 10:48.

Q. After he came did you and he go out and get something to eat?

A. I believe we did. I couldn't say for sure.

Q. After you came back you and he went to bed together? In your room 248? [309]

A. Yes, sir.

Q. And that was in the early morning of November 18th?

A. I couldn't be sure about the date.

Q. But at any rate, it was early in the morning the first time you saw him after he came here?

A. Yes, sir.

Q. I will ask you at that time and place after you and he had returned to room 248 and were together in the room with no one else present, if the following conversation, in substance and effect, did not occur, between you and your brother Robert E. Doores: that he asked you, or that you started discussing this case, and that he told you he was interested in the case because of the fact that his sister Shirley was mixed up in it, and you were mixed up in it, and in the conversation he asked you what part in the case George Clayton had played, and what he was supposed to have

(Testimony of Wesley Doores.)

done, or how-come he was in the trouble, and you laughed when he asked you that, and told him that Clayton did not have any part in the case at all; that you and Kelly were framing Clayton?

A. No, sir. We did not have no conversation like that at all.

Q. And in the same conversation, at the same time and place, between you, that if you did not state to him that if Shirley had to go to the penitentiary on this deal [310] Clayton might as well go with her, and that he said to you, at the time you made that statement, in substance and effect, "Well, Bunny, that doesn't seem right to me," and you said in substance and effect, "Well, I think that George kept Kelly and me from getting our split in this deal, and that is one reason we are framing him, and another reason is, I don't like him." Did you say that?

A. No, sir. There was no conversation like that whatsoever.

Q. That in the same conversation if the following was not stated to your brother by you "I have to go up there to appear in court. After this double crossing has been done, and I don't know how to keep from appearing up there. If I had the money I would leave the country"?

A. There was no conversation like that.

Q. Then finally you said to him, "How much money have you got?" and he said, "Well, I have a little with me," and you said, "Well, do you have enough with you so you could loan me \$100?"

(Testimony of Wesley Doores.)

and he said to you, "What do you want with it?" and you said, "I would buy a railroad ticket just as far as I could go. That would be one way of keeping from appearing up there, and I would be glad." Did that occur?

A. No, sir; that did not occur.

Q. Didn't he tell you he did not have enough money at that time to let you have \$100, and still be able to finish, [311] or have enough to finish his trip at home?

A. I don't remember no conversation like that.

Q. And in that conversation didn't you further state that one reason you wanted to get out of here and leave was because you were afraid you would be sent back to Walla Walla?

A. No, sir; that is a lie there.

Q. I will ask you if on the morning of the 20th of November at about 10:00 o'clock, if you did not ask, at the Pacific Hotel—Oh, yes, on the morning of the 20th of November, 1944, if you did not go down to the Turf on Main Avenue, and while you were sitting there with him and drinking coffee, if you did not ask him to run you out to George's place? A. I did not.

Q. And he agreed to do it?

A. He never took me out to George's place.

Q. And you and he got in the car and drove out to George's house on East Carlisle, arriving there about 11:00 o'clock? A. No.

Q. I will ask you further if you and he did

(Testimony of Wesley Doores.)

not get out of the car and go to the door and knock, and George hollered for you to come in, and when you went in he was lying on a couch, because his leg was hurting him, and as soon as you walked in George said to you, "What do you want here, [312] Bunny?" A. No.

Q. And you said, "I have come out to talk to you, George," and George said, "I don't want to talk to you," and you said "Now, George, I am sorry everything has happened as it has and I am trying to get you squared off, if you will let me talk to you long enough to explain it."?

A. That is not so.

Q. And you asked George for a loan of money and stated you would leave, is that correct?

A. I did not, no.

Q. And because you knew you and Kelly were framing him?

Mr. Connelly: Is that your question, that he said that?

Mr. Smith: Yes.

A. I never was out to see George at all.

Q. You never went out there at all?

A. No.

Q. And you stated to him, "If you will loan me enough money to leave I will guarantee you I will not be here for any trial to appear against you"?

A. No.

Q. And George said to you, "I wouldn't loan you a nickle; I wouldn't give you anything. Get out

(Testimony of Wesley Doores.)

of my house''? Is that true? "Get out of my house and stay out''? [313]

A. I never was out there.

Q. And following that you came back to town in your brother's car, and as you were coming back to town you were sore because George wouldn't talk to you, and you said to your brother, "That is all right. I will get even with him when we go into that court room" or "if I go into that court room''? Is that true?

A. That is not true.

Q. And you further stated, "And if the lawyer starts cross-examining me about narcotics or if I use dope I will tell him all the dope I used or bought I got from George Clayton"? A. No.

Q. I will ask you further if the night before your brother—

The Court: That was the 19th?

Mr. Smith: The 19th.

Q. At about 7:00 o'clock, in the hotel room, that you and your brother were not talking about the case—or you were talking about it—and your brother stated to you that he felt sorry for all of you, to be mixed up in a deal like that, and it looked bad, and he stated to you, "Bunny, I can't figure out for the life of me how George got mixed up in this. He must have had something to do with it, or he would not be mixed up," and you said, "He didn't have anything to do with it at all. When they came [314] out to pinch him he didn't know

(Testimony of Wesley Doores.)
what he was being pinched for." Was that statement made?

A. No, sir; it was never made by me.

The Court: Where were you when George Clayton was arrested?

A. I wasn't here at that time. I think I had left that day or the day before.

Mr. Smith: That is all.

Redirect Examination

By Mr. Connelly:

Q. Were you in Spokane when Clayton was arrested?

A. I couldn't say for sure now, whether I was or not.

Mr. Smith: May I ask one further question?

Mr. Connelly: Yes.

Q. (By Mr. Smith): Didn't you testify in one of your previous examinations you left Spokane on the 29th of May?

A. I left somewhere around the 29th. I don't know whether it was right on the 29th or not.

Q. (Mr. Smith): You were in town three or four days after your sister and George Clayton had been arrested, and Kelly?

A. I think the day I left town I read in the paper where Shirley was arrested, but I don't remember reading where George was arrested, and I couldn't say for sure whether [315] he was arrested at that time or not.

Mr. Smith: That is all.

(Testimony of Wesley Doores.)

Q. (Mr. Connelly, resuming): When did you leave town?

A. I believe it was around the 29th—28th or 29th.

Q. And you went to Montana?

A. Yes, sir.

Q. How long were you away from Spokane before you were arrested in Montana?

A. From the time I left, I was arrested on the 4th of June in Montana, and that would be around six or seven or eight days, I believe.

Q. And after you were arrested in Montana were you kept in jail?

A. I was, yes, sir; at Butte, Montana.

Q. Was Clayton with you in Montana—was he arrested with you in Montana?

A. No, sir; he was not.

Q. You left here alone, did you not?

A. Yes, I did.

Q. If Mr. Clayton was arrested on June 2nd, were you in Spokane on that day?

A. No, sir.

Q. Had you had any correspondence with your brother, Robert, before he came here on whatever date it may have been in November? [316]

A. No, sir; I did not.

Q. Had you informed him in any way you were living at the Pacific Hotel through the month of November?

A. No, sir; I hadn't.

Q. Did your sister, as far as you know, know you were living at the Pacific Hotel at that time?

(Testimony of Wesley Doores.)

A. He told me when he came in town that night he had read a letter I had wrote my sister in Montana and it had the return address on it where I was living.

Q. When had you last seen your brother prior to this occasion in November?

A. Oh, I would say it was February or March.

Q. Of this year? A. Yes.

Q. And where was that?

A. That was in Montana.

Q. How long did your brother occupy your room with you after he came here in November?

A. I would say two or three nights. I believe it was three nights.

Q. And then he got a room of his own?

A. Yes, sir.

Q. Can you tell us whether you or your brother first started talking about this case?

A. Well, he started talking about it first and wanted to [317] know about it. I didn't say anything whatever about it to him.

Q. Can you tell the court and jury what he said to you during the time he was talking to you about it, and tell the court and jury all the things he said to you?

A. Well, when we was talking in my room one night, oh, it was—I would say the 29th or 30th of November——

The Court: Ten days after he came here?

A. Yes, sir. About ten days after he came. And he asked me at that time if—He asked what I thought Shirley would get out of it—that is our

(Testimony of Wesley Doores.)

sister—and I told him I didn't know, and he told me at that time if I would leave town I could make it easier on her and Clayton by not appearing in this trial, and he told me, "I have got a car, and I am going to Boise, Idaho, and I will haul you as far as Boise, Idaho, if you will leave" and he said, "I can get the money for you to go on east" and he said, "You won't be here to appear at this trial," and I said no, I absolutely wouldn't leave.

Q. Are you still on parole from the Washington State Penitentiary? A. I am.

Q. Was anything further said by your brother than you have just told us in connection with your leaving?

A. That is about all I can recall right now that was said then. [318]

The Court: How much pay do you get out where you work?

A. Eighty-five cents an hour.

The Court: How much is that a week?

A. That amounts to — My pay runs around thirty-four and thirty-five dollars a week. I put in over-time some.

The Court: When do you get paid?

A. On a Friday.

Q. (Mr. Connelly resuming): There was some reference in the cross examination yesterday to your getting injections of morphine from Dr. Teed. Can you tell us why, or what reason you had for going up there to get an injection of morphine?

(Testimony of Wesley Doores.)

A. Well, I had been drinking here a couple of weeks, and I was sick, and I went up there to get a shot to straighten up on, more than anything. That is what the biggest part of the doctors give it to you for, is being drunk and nervous and sick.

Q. Did you ever get any morphine from Kelly?

A. I never did get any from Kelly.

Mr. Connelly: That is all.

Recross Examination

By Mr. Smith:

Q. You say you had been drunk for two weeks before May 24th? [319]

A. I was drinking, yes, sir, off and on.

Q. To such an extent that you were sick and ill and nervous and thought a shot of drugs would help you? A. That is right.

Q. How many days a week do you work at the aluminum plant?

A. I work six and seven days a week.

Q. Have you put in a full shift up until the time you were called to attend this trial?

A. I had, yes, sir.

Q. Every week?

A. You mean put in a full day every day?

Q. Put in a full weekly shift working every day?

A. I don't know if I have or not. I have missed two or three or four days. If you don't get the bus right on time you don't get out there.

Q. When did you go to work at the aluminum plant?

(Testimony of Wesley Doores.)

A. I have been there about six weeks, I believe—five weeks or six weeks.

Q. And you want us to understand you have worked six to seven days a week during all that time with the exception of two or three or four days you might have missed?

A. That is right.

Q. In this conversation with your brother Robert which occurred the 29th or 30th, where was that?

A. That was at the Pacific Hotel. [320]

Q. Was your brother Robert staying at the Pacific Hotel at that time?

A. I don't know if he was or not. He called me and came up to my room. I don't know whether he had checked out at that time or not.

Q. At that time you want us to understand he told you that you had better get out of town and offered to assist you?

A. That is right.

Q. There was no one present at that conversation except you and he?

A. Just him and I.

Mr. Smith: That is all.

Redirect Examination

By Mr. Connelly:

Q. One other question. Will you state whether or not you made a statement to Mr. Jensen and Mr. Lamb of the FBI concerning the facts of this case, on August 5, 1944?

A. I did.

Q. And did you sign that statement?

A. I did.

(Testimony of Wesley Doores.)

Q. Have you had occasion to see it or read from it since that time?

A. I believe I have seen it a couple or three times, and I believe I went over it with you one day. Or you asked [321] me a few things concerning it.

Q. Directing your attention to Plaintiff's Identification 43, I will ask you to state whether or not this is the statement you gave and which you signed for Mr. Jensen and Mr. Lamb on August 5th?

A. That is the statement I signed.

Mr. Connelly: I offer Plaintiff's Identification 43 in evidence.

Mr. Smith: Then I want to read the entire statement at this time, Your Honor. There are several pages.

The Court: Are you going to object to it?

Mr. Smith: Yes.

The Court: I will sustain the objection. You do not need to read it.

Mr. Connelly: I offered it in view of the cross-examination of the witness as to a purported conversation as to what he said he was going to do with Clayton when he got on the stand in court, which is supposed to have been made on the 20th of November to his brother.

The Court: How could his statement be material?

Mr. Connelly: Because it is consistent with the statements he has made here on the stand on direct and cross-examination.

(Testimony of Wesley Doores.)

Mr. Smith: I object to the statement of counsel.

The Court: I will sustain the objection to the offer.

Mr. Connelly: That is all.

(Witness excused.) [322]

JOHN F. HOBBS,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Connelly:

Q. What is your name?

A. John F. Hobbs.

Q. And where are you employed?

A. At the Old National Bank.

Q. In what capacity?

A. As vault manager in the safe deposit vaults.

Q. How long have you held that position?

A. About twenty-two years.

A. I will ask you to state whether or not you have with you the bank's records of the rental of a safe deposit box to Vera Wilson?

A. Yes, sir; I have. Here is a list of all the admissions to the box (handing to counsel).

Q. Have you the original signature card?

A. Yes, sir.

Q. What is Plaintiff's Exhibit 44 for identification?
A. What is the question?

(Testimony of John F. Hobbs.)

Q. Tell us generally what Plaintiff's Exhibit 44 for Identification is.

A. On these cards we have——

Mr. Smith: Just a minute. The answer is not [323] responsive.

A. We have a contract card here of the rental of this particular safety deposit box.

Q. (Mr. Connelly) What box is it?

A. This is in the "D" section, D-868.

Q. And what is the name of the renter?

A. The contract was opened by——

Mr. Smith: We object to that until it has been admitted. I don't know what it is.

The Court: He has answered the question.

Mr. Smith: Vera Wilson?

The Court: Yes. I will sustain the objection on the ground it is repetitious.

Q. (Mr. Connelly) I will ask you to state whether or not you see Vera Wilson in the court room.

A. Yes, sir. I see the lady sitting over there with the hat on with the green——

Q. You are pointing to the lady, Shirley Doores, a defendant in this case?

A. Well, as I have her record, it is Vera Wilson.

Q. You are indicating— You mean this lady here (indicating)? A. Yes, sir; that is the one.

Q. Did she sign the Identification 44?

A. Yes, sir. We have her signature here.

Q. Does the identification show the date when the contract [324] was entered into?

(Testimony of John F. Hobbs.)

A. Yes, sir; on the reverse side.

Q. Will you state what Plaintiff's Identification 45 is, which consists of all of these slips—generally?

A. Every time a customer comes in the vault and has access to it, we ask them to sign an entrance slip, as we call it, and they sign it, and also with the box number, and we have their signature card to verify it again, and it is stamped with the month, date and the year, to give us a pretty complete record of the exact times they have had access.

Q. Are these permanent records?

A. They are my original records.

Mr. Connelly: I offer Plaintiff's Identifications 44 and 45 in evidence.

Mr. Smith: To which we object as being incompetent, irrelevant and immaterial, and that particularly the last two items attached to Exhibit for Identification 45 are not admissible because they are subsequent to the date alleged in the Information.

The Court: They may be admitted and an exception allowed.

(Whereupon Old National Bank Safe Deposit Records admitted in evidence as Plaintiff's Exhibits 44 and 45.)

[Printer's Note]: Set out in full at pages 76-77 of original reporter's transcript. [325]

Q. (Mr. Connelly) Is it indicated on Exhibit 44 when the contract ended?

(Testimony of John F. Hobbs.)

A. Yes, sir; it is right there (indicating)—on August 4, 1944.

Q. Will you state whether or not you were present when the United States Marshal came to the bank and this box was opened?

A. Yes, sir; I was.

Mr. Smith: That is objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Q. (Mr. Connelly) And were you present when anything was taken from the box on that date, in the Marshal's presence? A. Yes, sir.

Q. Do you know what was taken from the box on that date?

Mr. Smith: That is objected to as being an act after the matter was ended, and not in furtherance of any alleged conspiracy.

The Court: The objection is overruled.

Mr. Smith: May we have an exception to the ruling?

The Court: Exception is allowed.

Q. (Mr. Connelly) You may answer.

A. Yes, sir; it was currency.

Q. Do you know how much?

A. I couldn't say offhand, but they have a record of it down [326] there.

Q. Have you the record here? A. No, sir.

Q. Did you see the currency? A. Yes, sir.

Q. Was there more than one bill?

A. Yes, sir; there were several—something

(Testimony of John F. Hobbs.)

around \$9000, but the exact figure I couldn't tell you.

Q. In currency? A. Yes, sir.

Mr. Connelly: You may cross-examine.

Cross Examination

By Mr. Smith:

Q. This box was cancelled August 4th?

A. Yes, sir.

Q. And I noticed you transferred this box to another safe depositor in your bank?

A. Yes, sir. It was transferred.

Q. Do you know when it was transferred?

A. I have that record, yes, sir. I didn't bring that record with me.

Q. Do your records show when the Marshal went in the bank? A. Yes, sir.

Q. When was that? [327]

A. It was on the—I made this record on this card, but we had a complete typewritten record in the bank. The record is on the safe deposit box and I made that myself. Is that the 29th, it is dated there—May 29th?

Mr. Smith: I will have this marked for identification.

(Whereupon, Defendants' Exhibit C was marked for identification.)

Q. Defendants' Exhibit C is a record of when this box was first attached or sequestered by the Marshall, is that correct? A. Yes, sir.

Mr. Smith: That is all, Mr. Hobbs.

(Testimony of John F. Hobbs.)

Redirect Examination

By Mr. Connelly:

Q. What is there on the record that shows the box was attached?

A. The record that we have in the bank was, there was a search warrant. There was no restraining order or attaching, or anything of that kind.

Q. There was no attachment?

A. No. The box was immediately released after the Marshal was there and they satisfied themselves and took what they wanted and they released the box to the customer. [328]

Q. Have you any record of the amount of money that was taken from the box?

A. The bank has the record.

Q. But you haven't it in your department?

A. No, sir.

Q. What man at the bank has that record?

A. Mr. Erickson would have it, the Assistant Cashier, or Mr. McWilliams, the Assistant Vice-president and Cashier.

Mr. Connelly: That is all.

Mr. Smith: That is all.

(Witness excused.)

WAYNE BEZONA,

recalled as a witness by the Plaintiff, further testified as follows:

Direct Examination

By Mr. Connelly:

Q. You are the same Wayne Bezona who was on the stand yesterday evening? A. Yes, sir.

Q. And you are the United States Marshal for the Eastern District of Washington?

A. Yes, sir.

Q. I will ask you to state whether or not on May 29th of this year you had occasion to go to the Old National Bank Safe Deposit Department?

A. I did. [329]

Q. And with reference to Box "D"-868, which was in the name of Vera Wilson, will you state whether or not you were present when that box was opened. A. I was.

Mr. Smith: May it be understood we have an objection to all this line of testimony?

The Court: Yes; your objection will go to all this testimony. I am overruling the objection.

Q. (Mr. Connelly) When the box was opened can you state whether or not in your presence any money was taken from it? A. I can.

Q. And was that money turned over to you?

A. It was.

Q. Have you it with you?

A. No; I don't have the money.

Q. Where is it?

(Testimony of Wayne Bezona.)

A. It is in a safe deposit vault in the Old National Bank in my custody.

Q. How long would it take you to produce it here?

A. The time it would take to go down to the bank and back, I guess.

Q. Do you know the amount of the money?

A. I do.

Q. How much was it? [330]

A. It was \$5,950.

Q. Can you tell us in what form that money was?

A. It was in currency.

Q. Did you make any list of the denominations of the currency?

A. I did.

Q. Have you that list?

A. I do.

Q. Where is it?

A. I have it in my pocket (producing paper which was marked Plaintiff's Exhibit 46 for identification).

Q. I hand you Plaintiff's Exhibit for Identification 46, and ask you to state the contents generally. State what it refers to.

A. Well, it contains the amount of money stated, and these bills were in fifty dollar denominations, I believe, and they are all numbered here. There was quite a list of them.

Q. I do not want you to read from it. Did you yourself take any part either in the preparation of the list or in checking the bills you have referred to with the list?

A. I did.

Q. Were they the same or not?

(Testimony of Wayne Bezona.)

A. They are the same.

Q. Does that constitute all the money you have referred to, this list? A. Yes, sir. [331]

Mr. Connelly: I offer Plaintiff's Identification 46 in evidence, and I am going to request the Marshal to produce the best evidence, if the Court will permit it—that is, the money itself.

Mr. Smith: Subject to the same objection we have made.

The Court: You do not object to it because it is not the best evidence?

Mr. Smith: No. I am not asking that he bring the money here.

The Court: I do not see any reason why he should bring \$5,950 in bills here.

Mr. Smith: We are not asking that he do that.

The Court: I will admit it, subject to the objection, but it is not the best evidence.

(Whereupon, List of Bills taken from Safe Deposit Box admitted in evidence as Plaintiff's Exhibit 46.)

[Printer's Note]: Set out in full at page 79 of original reporter's transcript.

Mr. Connelly: You may examine.

Mr. Smith: No questions.

(Witness excused.)

Mr. Connelly: The Government rests.

The Court: The jury will retire to the jury room.

(Whereupon, the jury retired to the jury room.)

(Testimony of Wayne Bezona.)

Mr. Connelly: There is one matter I completely overlooked.

Mr. Smith: And I would like to have Mr. Kelly [332] recalled.

Mr. Connelly: In fact, I overlooked having the jury see some of these exhibits, but they could see them later.

The Court: Bring in the jury.

(The jury then took its place in the jury box.)

R. D. KELLMER,

called as a witness for the Plaintiff, first duly sworn, testified as follows:

The Court: After you went out both lawyers decided there was something they had overlooked.

Direct Examination

By Mr. Connelly:

Q. State your name. A. R. D. Kellmer.

Q. Where do you live, Mr. Kellmer?

A. At Veradale, Route 1.

Q. Where do you work?

A. The First National Bank.

Q. In what capacity.

A. I am paying and receiving teller, but as of today I took the custodian's job in the vault, as the manager was sick.

Q. Of the Safe Deposit Boxes?

A. That is right.

(Testimony of R. D. Kellmer.)

Q. Will you state what Plaintiff's Identification 47 is, con- [333] consisting of three cards.

The Court: Just tell us what those cards are.

A. The first is a file card and the second is a signature card and the other is the contract for the rental of the box.

Q. (Mr. Connelly) And is the date the contract was entered into here on the contract?

A. Yes, sir; it was October 19, 1943.

Q. And the name of the renter, of course, appears, does it not? A. It does appear.

Q. And where is the signature on the card?

A. The signature of the renter is here (indicating).

Mr. Connelly: I offer Plaintiff's Identification 47 in evidence.

Mr. Smith: We make the same objection we have made to the other exhibits of like character.

The Court: I think it should be sustained—October 19, 1943. Does the date of the termination of the contract appear there? A. Yes, sir.

The Court: Where is it?

A. Right here (indicating).

The Court: That is when it was terminated?

A. That is when we rented her the box.

The Court: But when did it end?

A. It has not expired yet that I know of. [334]

The Court: I will sustain the objection.

Mr. Connelly: I would like to be heard on it, if Your Honor please. There is one point that—it

(Testimony of R. D. Kellmer.)

would not be proper to discuss it in the presence of the jury.

The Court: All right. You may go to the jury room.

(The jury then retired to the jury room.)

Mr. Connelly: The charge here is conspiracy. The purpose of the first exhibit from the Old National Bank of course was to show that Shirley Doores had rented a box and put money in the box. She rented the box on April 24, 1944. That is the date upon which Dr. Teed completed the payment of \$6,500. He had paid \$3000 on Saturday, the 22nd, and \$3500 on Monday, the 24th. At the same time Shirley Doores had a safe deposit box in the First National Bank under her own name. The purpose of renting a second box under an assumed or fictitious name becomes apparent when it is considered she already had this box in the First National Bank. She is living with this defendant whom the evidence shows was a party to this conspiracy. That is the purpose I offered it for. No money came out of this box that we intend to offer. We want to show that she had a box in her own name in another bank.

The Court: I will sustain the objection. Is there any other question you are going to argue about? [335]

Mr. Smith: I would like to recall Mr. Kelly. There are only one or two questions that I intend to ask him.

(Testimony of R. D. Kellmer.)

The Court: You may be excused, Mr. Kellmer, and you may take your record with you.

(Witness excused.)

Mr. Smith: I want to examine Mr. Kelly on something that developed in the testimony of Dr. Teed after he had testified, but particularly with reference to the statement that Dr. Teed gave him certain things. I want to ask him about it.

Mr. Connelly: I object to counsel cross-examining Mr. Kelly on the testimony of Dr. Teed. There has been cross-examination of Mr. Kelly on the testimony of Bunny, and of Bunny on the testimony of Mr. Kelly, but I do object to cross-examination of Kelly on something which was not touched upon in the direct examination. You cannot impeach the testimony of one witness by another's cross-examination. He can call him as his own witness and impeach him, but I do not think it is proper cross-examination to examine Mr. Kelly on what Dr. Teed says.

The Court: Mr. Kelly testified he went to Dr. Teed and got \$250 and had a conversation there with him and he gave him \$150——

Mr. Smith: It was \$125 and \$125 later at another place. [336]

The Court: I think that is what he said on cross-examination, but on direct examination he said, "He gave me \$250 that day and said he would give me another \$100 later." And when you came to cross-examine him it was \$125 and \$125, but

he said, "He gave me \$125 a few days later and twenty dollars for my trouble." I think they would have a right now knowing that there is some question about the fact he had received in addition to the \$125 or \$150, that he received something more. Suppose Dr. Teed said instead of giving him \$125 plus some morphine, he would say he gave him \$500. I think they can call him back and ask him, "Did you not, as a matter of fact, get \$500, and——"

Mr. Connelly: I do not think so. For what purpose? To prove Dr. Teed or Kelly is not telling the truth?

The Court: They can cross-examine on the direct examination. He said he got a certain amount. If they have reason to know at the time it was more than that or something in addition to that, they should have cross-examined him. If Dr. Teed had testified first, and they wanted to bring him back for more examination, I would not let them do it, but Mr. Smith and Mr. Gleeson had no way of knowing that Dr. Teed was going to testify that he gave him narcotics in addition. I will let you cross-examine him, if that is all you are going to do. [337]

Mr. Smith: Perhaps one other question I am going to ask, if he divided the \$250 with anyone. I am going to ask him if he gave Shirley any part of it.

Mr. Connelly: Is there any dispute about that?

Mr. Smith: I am going to ask Kelly if he gave Shirley any part of the \$250.

Mr. Connelly: That is not proper cross-examination.

The Court: You can call him as your own witness and be bound by his statement on that, but it is not cross-examination on the other. Bring in the jury and Mr. Kelly.

(The jury then took its place in the jury box.)

The Court: I think now that the testimony of Mr. Bezona has been received, I will remove from the exhibit the entrance slip—the last one. That has nothing to do with this case.

Mr. Connelly: I have no objection to that. I merely offered them all together.

The Court: I am not granting the objection to the next to the last one. I will instruct the jury to disregard that portion of the contract card which refers to any date of cancellation of it or any cancellation of it. It is admitted only for a consideration of the time during which this conspiracy is alleged to have taken place. The jury will disregard that portion on the back that shows the cancellation or the date of cancellation. [338]

EDWARD WILLIAM KELLY,

recalled as a witness for the Plaintiff, further testified as follows:

Cross Examination

By Mr. Smith:

Q. You are the same Edward William Kelly who testified in this case before? A. I am.

Q. Mr. Kelly, do you recall when you were examined with regard to the payment of \$250 by Dr. Teed to you? A. Yes.

Q. And an additional payment of twenty dollars which he made to you? A. Yes, sir.

Q. Can you fix the date of that payment, approximately?

A. I think he made it on the 16th day of May, the 15th or 16th.

Q. Did I understand you to testify part of it was paid in Coeur d'Alene and part in Spokane?

A. That is right.

Q. How much was paid at Coeur d'Alene?

A. It seems to me he gave me \$125 or \$150 at Coeur d'Alene.

Q. And the balance of it was paid in Spokane?

A. Yes, sir.

Q. Where?

A. In front of the Union Pacific depot.

Q. That is the Union station? [339]

A. Yes, sir.

Q. On Trent Avenue? A. Yes, sir.

Q. At that time was that all that Dr. Teed gave you? A. No.

(Testimony of Edward William Kelly.)

Q. What else did he give you?

A. He gave me a bottle of morphine of quarter-grains.

Q. What did you do with the morphine?

Mr. Connelly: I object to that as improper cross-examination and as being incompetent, irrelevant and immaterial.

The Court: The objection is sustained. That is a matter you would have to cover if you wish to recall him as your witness.

Mr. Smith: That is all.

Mr. Connelly: That is all.

(Witness excused.)

Mr. Connelly: The Government rests.

(Whereupon, the following proceedings were had at the Court's Bench, without the hearing of the jury:)

Mr. Smith: The Government having rested its case in chief, the Defendant George Clayton challenges the sufficiency of the evidence to prove the crime of conspiracy, [340] as charged in the indictment, and moves for a dismissal of the case, or in the alternative, that the jury be instructed to bring in a verdict of not guilty as to said defendant.

The Court: The motion is denied and an exception allowed.

(Whereupon, the trial was resumed in the presence and hearing of the jury as follows, to-wit: Mr. Smith then made an opening statement of defendant's case to the jury.)

TESTIMONY ON BEHALF OF THE
DEFENDANTS

ARTHUR DECKELMAN,

called as a witness for the Defendants, first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your name, please, in full.

A. Arthur Deckelman.

Q. Are you employed at the Old National Bank?

A. The First Natitonal Bank.

Q. And what is your capacity there?

A. I am the Auditor.

Q. When you were examined the other day on your voir dire as a juryman, you mentioned the fact that you had cashed some checks or a check for the Defendant George Clayton? [341]

A. Yes, sir.

Q. Since that time at my request, have you examined your files and records at the bank to ascertain if you have a photostatic copy of the check referred to? A. Yes, sir.

Q. Do you have such a film? A. Yes, sir.

Q. Showing the check? A. Yes, sir.

Q. Will you tell us what this machine is (indicating).

A. That is the Recordex, a projecting machine that will show a picture of the check.

Q. What is the practice of the bank as to

(Testimony of Arthur Deckelman.)

making photographic films of every check that is cashed?

A. We photograph all checks that are drawn on our bank,—We photograph all checks drawn on out-of-town banks.

Q. Did you examine this Recordex machine and find out whether or not a check signed by one Dallas Lyons, dated April 8, 1944, in the sum of \$800, was shown on this film?

A. Yes, sir; I did.

Mr. Smith: I wonder if we might set this up and connect it so it will show for the jury?

(Recordex machine placed before jury.)

Q. Will you point out to the jury the check to which I have referred.

A. Right there (indicating on Recordex). [342]

Mr. Smith: I wonder if the jury might file by and see it.

The Court: What are you going to offer in evidence here?

Q. (Mr. Smith) Did we attempt to ascertain whether or not a photostatic copy could be made of that check? A. Yes, sir.

Q. And did we find anybody that would be willing to undertake it?

A. Not in Spokane, no, sir.

Mr. Connelly: I object to this thing being exhibited to the jury, until it is properly identified, and until it becomes competent.

Mr. Smith: We could take that piece of film

(Testimony of Arthur Deckelman.)

out if necessary, but I do not like to mutilate the bank's records.

Q. (Mr. Smith) Are those checks on a continuous roll? A. Yes, sir.

The Court: Is there an enlargement of this?

A. This is an enlargement of the checks. It is very small.

The Court: You do not wish to leave this machine here?

A. No, sir. I had orders to bring it back.

Mr. Smith: I thought we could have the jury see it and then have the witness read the face of the check into [343] the record.

Mr. Connelly: I object to the jury seeing it. It is not the best evidence, and there is no showing the original is not available.

The Court: Have you got another film showing the back of it?

A. No, sir. We do not photograph the back of them.

Mr. Smith: I will produce further evidence as to who presented the check, if Your Honor please.

The Court: For the present just put it to one side and present your other evidence and we will see.

Mr. Connelly: Until it is admitted, may it be removed?

The Court: Yes. Turn out the light in the machine. (Light turned out in machine.)

Q. (Mr. Smith) Do you recall on or about the date April 8, 1944, that a check drawn on the

(Testimony of Arthur Deckelman.)

account of Dallas Lyons in the First National Bank of Spokane, was presented at that bank for payment?

A. This particular check was cashed, yes.

Q. And do you recall the person who presented that check for payment?

A. Yes, sir; Mr. Clayton.

Q. Is the person who presented the check for payment the George Clayton who is here in the Court Room sitting by the [344] table?

A. Yes, sir.

Q. At the time the check was presented for payment, was there some question about cashing it?

A. Yes, sir; there was. May I enlarge on that?

Q. Yes.

A. Mr. Clayton came in the bank and had, I think, three or four checks signed by Dallas Lyons, and Mr. Lyons had been drinking and his signature was almost illegible, and we refused to cash the checks, and the teller asked me to check up on it, and the funds were in the bank, but I refused to cash it because the signature was not exactly right, and we went up to the cashier's desk and Mr. Clayton said he would get the maker of the check there, and I talked to Mr. Lyons and he said it was all right to cash the checks, and we told him the signature was not very good and we would prefer that he make a new check for the three or four checks, and we would pay the money for them, and there was a check for \$800 made out, and we cashed it, and Mr. Clayton and Mr. Lyons were both there.

(Testimony of Arthur Deckelman.)

Q. Did Mr. Clayton endorse the check?

Mr. Connelly: That is objected to as not the best evidence.

The Court: Objection sustained.

Q. (Mr. Smith): Did you pay Mr. Clayton the money on the check? [345] A. Yes, sir.

Q. You gave him the \$800? A. Yes, sir.

Mr. Smith: We offer in evidence the visual evidence we have of the check for the benefit of the jury.

Mr. Connelly: I object to it as not competent, relevant or material and as not being the best evidence.

The Court: The objection is overruled. They may look at it.

Mr. Connelly: May I interrogate the witness?

Voir Dire Examination

By Mr. Connelly:

Q. Did you yourself pay Mr. Clayton this money?

A. I cannot recall whether I took him back to the window or whether I got the money from the teller myself.

Q. You were not the teller? A. No, sir.

Q. You have a desk up in front?

A. I have a desk on the balcony and I also relieve at the desk down in the front part in the absence of some other officer.

Q. Did Mr. Clayton have a checking account at the bank? A. I don't believe he did.

Mr. Connelly: That is all. [346]

(Testimony of Arthur Deckelman.)

Direct Examination—(Resumed)

By Mr. Smith:

Q. Will you turn on the light?

The Court: Read into the record what that check says.

A. The check which now shows on the projection machine is a check drawn on the First National Bank of Spokane, dated April 8, 1944, payable to cash for \$800, signed Dallas Lyons, and cashed by our teller, I believe No. 9.

The Court: All right. The jury may form in line and look at the check. Point it out to them.

(The jury then filed by the Recordex and examined portion of film therein shown.)

Mr. Smith: You may cross-examine.

Cross-Examination

By Mr. Connelly:

Q. Was Mr. Lyons a regular customer of the bank?

A. I think he had an account there off and on, oh, I would say for three or four years.

Q. Does he still have an account there?

A. No, sir.

Q. When did he close it?

A. I do not think he has. I think he closed it on April—it was sometime after that—In fact, I closed it for him. I think it was about the 12th or the 17th, somewhere there. [347]

Q. What is his business?

A. I think—I believe he runs a beer parlor or a

(Testimony of Arthur Deckelman.)

pool room or card room or service station at Pendleton, or did at that time.

Q. At Pendleton, Oregon?

A. Yes, sir. That is what he told me.

Q. That is the only time you ever saw him, is it?

A. Mr. Lyons?

Q. Yes.

A. No, sir; I saw him on other occasions.

Q. Do I understand he was intoxicated on this occasion? A. Not when he came in, no.

Q. But you said something about his having been been intoxicated.

A. I guess maybe I assumed that, because his signature was so irregular.

Q. Did you ask him if he was intoxicated when he wrote the checks? A. No, sir.

Q. What did you say to him when you refused to cash the checks when Mr. Clayton produced them?

A. I think we asked him if these were his checks and he said yes, and it was all right to give him the money, and we told him his signature was not too good, and if it was all right with him we would like to have a new check for them. [348]

Q. Did he state what it was for?

A. No, sir; he did not.

Mr. Connelly: That is all.

Mr. Smith: That is all.

(Witness excused.) [349]

GEORGE CLAYTON,

called as a witness in his own behalf, first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your name, please.

A. George Clayton.

Q. What is your age?

A. Forty-one

Q. And how long have you lived in Spokane?

A. Off and on all my life.

Q. Where were you born?

A. Here in Spokane.

Q. I notice you have a limp. Will you explain what the cause of that is.

A. Well, the doctors claim something is wrong with my back and it is pressing on a nerve in my leg.

Q. A sort of a sciatica? A. Yes, sir.

Q. How long have you known Shirley Doores?

A. About five years.

Q. During that period of time has there been a common law relationship of husband and wife existing between you and Shirley Doores?

A. I guess you could call it that.

Q. During that period of time how much of the time have you [350] and she resided together?

A. Oh, I would say out of the five years maybe we was together five or six months.

Q. Will you explain the reason for that?

A. Well, she just wasn't around.

(Testimony of George Clayton.)

Q. Did you know where she was?

A. No, I didn't.

Q. Do you know other members of her family?

A. Yes, I do.

Q. And whom do you know in her family?

A. I know her father.

Q. What is his name?

A. William Doores.

Q. And is he also known as W. E. Doores?

A. Yes, sir.

Q. Where does he live?

A. I believe in Martindale, Montana.

Q. Who else do you know?

A. I know Bunny Doores and Robert Doores and her sister Jean Doores.

Q. During the past year or so what has been your occupation?

A. Well, I work in a card room—Moore's Card Room—and I have done considerable gambling.

Q. Did you while you were at Moore's card room become acquainted with Ed Kelly, the man who testified here? [351]

A. Yes, sir.

Q. Can you tell us when that was?

A. Well, I just can't tell you. Somebody else hired him. It wasn't me, but I think sometime in the winter of 1943.

Q. And you say he was hired at Moore's card room?

A. Yes, sir. He worked there.

Q. In what capacity?

A. Well, what you would call a booster, I guess, in a poker game.

(Testimony of George Clayton.)

The Court: What is a booster in a poker game?

A. They sit down and play and try to make it look like a poker game when nobody else is playing.

Q. (Mr. Smith): When did you see Bunny Doores with reference to this matter that is on trial—how long before?

A. You mean when I first saw him when he first came back?

Q. Yes.

A. Well, he come from Walla Walla sometime in the fall, I believe, of 1943.

Q. And when he came here where did he go?

A. He come out to my house.

Q. Did you take him in? A. I did, sir.

Q. How long did he stay at your house?

A. He lived with me for about—Him and I alone was there about three months.

Q. Do you know where Shirley Doores was at that time? [352]

A. Well, I didn't know at that time where she was, but when she come back she said she had been in Montana and North Dakota, and some place up there.

Q. Did Bunny Doores have any employment at that time?

A. No, sir; he wasn't working, but he likewise went to work at Moore's card room.

Q. Did you know Dr. E. H. Teed of Coeur d'Alene? A. No, sir.

Q. At that time or at any time until you came to the court room here, had you ever seen the man?

(Testimony of George Clayton.)

A. I never saw him in my life until I saw him out here, and somebody said that was Dr. Teed.

Q. Did you know of your own knowledge that Shirley Doores had been going to Dr. Teed, beginning sometime in December, 1943, and getting narcotics?

A. I didn't know what the doctor's name was, but she said a time or two she was going to see some doctor in Coeur d'Alene.

Q. To get narcotics?

A. I imagine that was it.

Mr. Connelly: I object to what he imagines, and I move that the witness be instructed to answer the question.

A. Shirley was very secretive.

Mr. Connelly: I object to the voluntary statement of the witness. [353]

The Court: I will strike the last part of his last answer and likewise the voluntary statement.

Q. (Mr. Smith): Can you fix the time, about the time, she returned here this year or last year?

A. She returned from where?

Q. Wherever she was, in Montana or North Dakota.

A. You mean recently?

Q. Last spring.

A. I think she came back sometime in February. I am not sure.

Q. Did she come out to the house?

A. Yes, sir.

Q. Was Bunny Doores living there at that time?

A. Yes, sir.

(Testimony of George Clayton.)

Q. Do you know how many times Bunny Doores and Edward Kelly had been out to your house or the house prior to April 9, 1944?

The Court: You mean both at the same time?

Q. At the same time, I mean.

A. They were there several times—Kelly and Bunny; especially when Shirley was there—Bunny would come to see his sister and Bunny and Kelly was friends and they generally would come together.

Q. Do you recall a Sunday afternoon, April 9, when Kelly and Bunny came to your house for dinner, and a certain discussion took place in reference to going up to [354] Coeur d'Alene to see Dr. Teed? A. No, sir.

Q. Were you present at any such conversation?

A. No, sir.

Q. Did you ever suggest to Bunny in the month of January that he assume to play the part of a federal narcotic agent and go to Coeur d'Alene and throw a scare into Dr. Teed? A. No, sir.

Q. Did you ever ask Bunny Doores to procure for you a federal badge and credentials?

A. No, sir.

Q. For such a man? A. No, sir.

Q. Did you at any time either on or around the first of February, 1944, or at any other time, point out to Bunny Doores a tall, dark complected man, and tell him that you had propositioned this man to go to Coeur d'Alene and he had refused to do so because you could not furnish the badge and credentials? A. No, sir.

(Testimony of George Clayton.)

Q. At any time at your house in the month of January did you get up in the morning and go outside and remain for an hour or so and then come back into the house and state to Bunny Doores you had found a man to go to Coeur d'Alene [355] on that Dr. Teed deal, and that you wanted to get some credentials and a federal badge?

A. No, sir; it isn't so.

Q. During the time that Bunny Doores and you were living together, did you ever have any trouble with Bunny Doores with reference to a ring and some money that belonged to you?

A. Yes, sir; I did.

Q. Will you fix the time as nearly as you can?

A. That was while Shirley Doores was in Montana.

Q. What month?

A. It was—I couldn't say for sure, but I think it was possibly the first part of February, because I think she came back sometime in February.

Q. Do you recall when Bunny Doores went to Montana in February or around that time, or do you know whether he went or not?

A. Yes, sir; he was on a trip over there.

Q. What was the incident to which I have referred about the diamond ring and some money?

A. Well, he tried to steal my ring, was all.

Q. When and where did this occur?

A. In the house.

Q. Will you describe it in detail to the jury?

(Testimony of George Clayton.)

A. Well, him and I had been out on a little drinking party [356] and we went home and I laid my ring and pocket book up on the dresser and went to bed, and maybe I was in bed twenty minutes when I heard a little creaky noise and I woke up and I seen him reach up—he was fully dressed—and take my ring and start backing out with it. I jumped up quick and turned on the light, and by the time I got ahold of him he was going out the back door, and I said, “What are you going to do with the ring?” and he said, “Oh, nothing. I was going to put it away and take care of it while you was drinking.” And I said, “Give me the ring. I will take care of it” and he gave me the ring, and I put it on my finger and went back to bed. And I laid there a few minutes—he was in Shirley’s room—and I thought I would count my money, and see if he had taken any, and I got up and I had \$120, and I figured that was about right, and I went back to bed, and next morning when I got up he was gone with my car. I looked at my pocket book and there was fifty dollars left in it.

Q. By the way, what kind of a car did you have at that time? A. I had an Oldsmobile.

Q. Do you still have the same car?

A. Yes, sir.

Q. Since that time have you and Bunny Doores been on agreeable terms or not?

A. No. We agreed to disagree. [357]

Q. Was this a valuable diamond ring?

(Testimony of George Clayton.)

A. Yes, sir. It was worth about four thousand, I presume—now.

Q. Do you recall being at Moore's card room on the afternoon of April 10th when Kelly came in and you and he went across to the Turf——

Mr. Connelly: I object to any leading questions on the part of counsel.

Mr. Smith: I am just directing his attention to an incident.

The Court: Overruled.

Q. (Mr. Smith): And he went across to the Turf——

Mr. Connelly: Again I object to the leading form of the question.

The Court: The objection is overruled.

A. You say we went across the street?

Q. I say, do you recall an incident of that kind?

A. I wouldn't say for sure. When he was working there he was running across the street several times a day for coffee.

Q. Do you recall any conversation at about that time with Kelly in the Turf Cafe in which you asked him, "How did you come out up there?" or words to that effect? A. Up where?

Q. Just that—"How did you come out up there?" or "How did you come out up there at Coeur d'Alene?" [358] A. No, sir.

Q. Did you know that Kelly and Shirley Doores had been to Coeur d'Alene on the 10th of April?

A. No, sir; I did not.

(Testimony of George Clayton.)

Q. Did you know what time Shirley Doores had left the house that morning?

A. The 10th of April?

Q. Yes. A. No, I don't.

Q. You mentioned the fact Shirley had a bedroom in the house? A. Yes, sir.

Q. Do you have a separate bedroom?

A. Yes, sir.

Q. How far removed from her bedroom is your bedroom?

A. Her room is in the back and there is the kitchen and—two rooms between them.

Q. Did she occupy that room back there?

A. Yes, sir.

Q. And what part of the house was your bedroom in?

A. I was in the front and her room was in the back.

Q. Were you present at any conversation with Edward Kelly, Bunny Doores and Shirley Doores, on the afternoon of April 10th, where any discussion was had about anything that had occurred at Coeur d'Alene, Idaho? A. No, sir. [359]

Q. Did you stand in front of the Turf Beer Parlor on that afternoon for ten or fifteen minutes and talk to Shirley, after which you came into the Turf with her and some statement was made, either by her or by you, to Kelly and Bunny that she only got \$300, and that part of that was in a check?

A. No, sir.

(Testimony of George Clayton.)

Q. Do you recall an incident out at your house when Kelly and Bunny came out there while you were not in the house and some trouble occurred?

A. Yes, sir.

Q. Can you fix the date when that was?

A. I don't remember what the date was, but it was sometime in May.

Q. Describe to the jury in your own words what occurred.

A. Well, this was the first that I got wind or word or something that there was trouble. I was out in the garden and Shirley comes to the back door and hollered for me to come in. I came in the house. Kelly was seated there, and Bunny Doores was standing by the door, and there was nobody saying anything. They was just sitting there, and Bunny was standing, and Shirley was sitting there and Kelly sitting here (indicating). Bunny Doores said, "Well, we might just as well go, Kelly. That is fourteen thousand we never will get a nickel out of." I don't [360] recall, but I believe Kelly said, "Well, there will be something done about this." And Bunny Doores says, "Yes, there will be some squawking done, loud and long, and they went out the door. After they went out I said to Shirley, "What is this?" and she said to me, she said, "It is none of your business. It is my affair and it doesn't concern you at all."

Q. What has been Shirley's attitude, her habitual attitude, toward you, when you tried to inquire, or if you did inquire into her activities?

(Testimony of George Clayton.)

Mr. Connelly: That is objected to as calling for a conclusion.

The Court: I think it does call for a conclusion, Mr. Smith.

Q. (Mr. Smith) Will you state whether or not Shirley Doores was frank and open in advising you of any activity on her part, or the opposite.

Mr. Connelly: I object to the question for the same reason. It calls for a conclusion.

The Court: I think so.

Mr. Smith: He can say either way.

The Court: You can ask if she would tell him where she had been and what she was doing, but to ask if she was frank is asking for a conclusion. You can ask if she did tell him where she had been and what she was doing. [361]

Q. (Mr. Smith) Mr. Clayton, on any of these occasions when Shirley came back after being away, would she tell you where she had been or what she had been doing?

A. No, sir. She only told me what she wanted me to know.

Mr. Connelly: I move the last part of the answer be stricken and the jury instructed to disregard it.

The Court: I will grant the motion.

Q. (Mr. Smith) Did you ever agree at any time that you would drive your car over to Coeur d'Alene and take Kelly and Shirley over there?

A. No, sir.

(Testimony of George Clayton.)

Q. Did you ever make the statement to Bunny Doores or in his presence that if there was any trouble you didn't want your car seen over there?

A. No, sir.

Q. Was there any arrangement with you and Shirley Doores, Bunny Doores and Edward Kelly, that you were going to answer a phone call at the Halliday Hotel on April 10th and pretend to be Mike Sanders? A. No.

Q. And was it stated to you—or did you state you wanted to sleep in, or had other business to do, and ask Bunny Doores to do it for you?

A. No, sir.

Q. Referring again to the afternoon of April 10th at the [362] Turf Cafe, did you ask Kelly "How did you come out at Coeur d'Alene, or up there?" and did Kelly state to you, "Everything worked out just as planned."?

A. No, sir.

Q. Did you ever state to any of those persons that Dr. Teed had not come up with as much as you thought he would? A. I didn't get that.

Q. Did you ever state to any of those persons that Dr. Teed had not come up with as much as you thought he would? A. No, sir.

Q. Did you ever state to Bunny Doores that Dr. Teed was going to get some more money in a day or so? A. No, sir.

Q. Did you loan Bunny Doores \$100?

A. I have loaned him more than \$100, ten dollars and twenty dollars at a time.

(Testimony of George Clayton.)

Q. Did you loan him \$100 on or about the 10th or 12th of April? A. No, sir.

Q. Did you ever mention to him anything in connection with little white tablets, referring to morphine? A. No, sir.

Q. Now, Mr. Clayton, did you have in mind purchasing some kind of an establishment at Pasco?

A. I did. [363]

Q. Did you go to Pasco in the month of April?

A. Yes, sir.

Q. And do you recall when that was?

A. Well, it was the latter part of April.

Q. Who accompanied you to Pasco?

A. Oh, a fellow named Sam Lavin, a salesman, rode down with me.

Q. On that occasion did Kelly and a girl named Rita Taylor go with you?

A. No, sir. That was the trip before. They went down a month or so before that. About a month before that.

Q. That is the trip I am referring to.

A. Oh.

Q. Did you go to Pasco one time with Mr. Kelly? A. Yes, sir.

Q. And a woman named Rita Taylor?

A. Yes, sir.

Q. And on that trip did you talk with Kelly, or did you state to Kelly on that trip to Pasco, that you knew that Shirley had only gotten \$600 from the doctor? A. No, sir.

(Testimony of George Clayton.)

Q. Did you also state to Kelly on that trip and during the course of that trip that what Bunny Doores did should not entitle him to any of the money at all? A. No, sir. [364]

Q. Did you ever tell Kelly at that time or at any other time that if he told anybody about the matter you would get someone to come in and keep him quiet?

A. No, sir; I never told him nothing.

Q. Did you tell Kelly that not to tell Bunny's wife about this matter or she would be sure to tell Anderson and Albright? A. No, sir.

Q. And you would all be put in jail?

A. No, sir.

Q. Did you ever call Bunny up on the telephone and tell him in effect, "You and that other rat had better keep your mouths shut or I will bury you in the state penitentiary"?

A. I never told him that in my life.

Q. And, "You know I have the money to do it with"—or words to that effect? A. No, sir.

Q. Did you ever show Bunny a wallet containing some money which you stated to him was \$6,000? A. No, sir.

Q. Did you ever have \$6,000 at one time?

A. It has been a long time—— No, I haven't.

Q. You referred to making a second trip to Pasco. A. Yes, sir.

Q. And on that occasion who went with you?

[365]

A. Sam Lavin.

(Testimony of George Clayton.)

Q. Was Sam Lavin contemplating going into business with you?

A. No. On my first trip down he rode back with me, and he was telling me about a place for sale, and he wanted me to go back down and look it over, and he wanted to take a ride.

Q. Can you state when that next trip was made?

A. It was the last of April. I ain't sure of that.

Q. At that time did you borrow any money from anybody around that time when you were contemplating buying this place?

A. Yes, sir. Before I made the trip down there I borrowed \$2000.

Q. Did you have the money with you?

A. Yes, sir.

Q. When you came back what did you do with the money?

A. I put it in the bank.

Q. In what bank?

A. The Old National Bank.

Q. In your bank account?

A. Yes, sir.

Q. Whom did you borrow the \$2,000 from?

A. From my mother.

Q. What is her first name?

A. Jennie Clayton.

Q. Did you also deposit \$1,050 in your account in the Old [366] National Bank on April 12th?

A. I did.

Q. Where did you get that money?

A. That was money that we took in the card room down there.

(Testimony of George Clayton.)

Q. Was part of that money \$800 you had gotten from a man named Dallas Lyon?

A. Yes, sir.

Q. And was that represented by a check which you cashed at the First National Bank?

A. Yes, sir; that is right.

Q. Do you recall the occasion when that check was cashed?

A. When I cashed it at the First National Bank?

Q. Yes.

A. The first of April. I don't know the date.

Q. You heard Mr. Deckelman testify today?

A. Yes, sir.

Q. Was part of that money that you got on that check, was that put in to make the \$1050, deposit?

A. Yes, sir.

Q. There has been some testimony concerning a deed or some deeds to this property. You first acquired it when?

A. I first bought the place—I don't know the date—but sometime in September, I believe, in 1943.

Q. How much did you pay for it?

A. I paid down \$1500. [367]

Q. Was there a mortgage on the property?

A. Yes, sir; there was

Q. Did you assume that mortgage?

A. Yes, sir.

Q. How was the place furnished?

A. You mean the furniture?

(Testimony of George Clayton.)

Q. Who bought the furniture?

A. I bought part of it and part of it was there, and Shirley bought some of it.

Q. Do you know where she bought the furniture?

A. She bought it from Pratt's Furniture Store, I believe.

Q. You don't know that to be a certainty?

A. Well, I heard the man's testimony here that she bought a davenport and chair.

Q. I was not referring to that transaction. I was referring to September, when you moved into the house.

A. Yes. I don't know where she bought it.

Q. Now, Mr. Clayton, showing you first for identification a document marked Defendant's Exhibit "D," I will ask you to state if that is a deed you executed and gave to Shirley Doores?

A. Correct.

Q. And I handing you now a document marked Defendant's Exhibit "E," and ask if that is the deed which Shirley Doores gave to you? [368]

A. Yes, sir.

Q. And handing you a document marked for identification as Defendant's Exhibit "F," I will ask you to examine that and state if that is a deed you gave to Shirley Doores?

A. Yes, sir.

Q. Will you explain to the jury, Mr. Clayton, this first transaction covered by Exhibit "D"?

A. Well,—

(Testimony of George Clayton.)

The Court: Will you give the dates of the deeds?

Mr. Smith: I will let Mr. Clayton look at them and then I will offer them. The first two are deeds that have been testified to. You have no objection to their being admitted?

Mr. Connelly: If you say they are the same as those testified to, I have no objection.

The Court: Defendant's Exhibits "D" and "E" may be admitted.

(Whereupon, Deeds marked for identification Defendant's Exhibits "D" and "E," were admitted in evidence.)

[Printer's Note]: Set out in full at pages 84-86 of original reporter's transcript.

Mr. Smith: Exhibit "D" is a deed from George Clayton to Shirley Doores, dated February 4, 1944. Exhibit "E" is a deed from Shirley Doores to George Clayton, dated May 8, 1944. Do you object to the admission of this?

Mr. Connelly: Yes, sir, I do. It is a self-serving [369] declaration and not properly identified.

Mr. Smith: We will bring Mr. Berkey in later.

Mr. Connelly: Until you do, I will object to this exhibit.

Mr. Smith: I do not think the objection is well taken, Your Honor.

The Court: It may be admitted.

(Whereupon, Deed marked for identification Defendant's Exhibit "F" was admitted in evidence.)

(Testimony of George Clayton.)

[Printer's Note]: Set out in full at page 89 of original reporter's transcript.

Mr. Smith: Our exhibit "F" is a deed from George Clayton to Shirley Doores, dated May 16, 1944. All of these deeds are for the same property.

Q. Will you explain this first transaction with Shirley Doores to the jury.

A. Well, I bought the place and put down \$1500. The consideration was \$3000, with \$1500 more to be paid. Do you want me to go through the whole thing?

Q. Yes.

A. And I built the garage and sidewalk at this place, which cost me about thirteen or fourteen hundred dollars. Then I traded the place to Shirley Doores, after I had paid—I just forget how many payments—for this diamond ring. It was valued at \$3000.

Q. Did you know where she got the ring?

A. She got it on the Coast some place. I don't know where.

Q. Did she ever tell you where? [370]

A. I just don't remember.

Q. Will you explain, then, the transaction represented by Exhibit "E," the deed of May 8, 1944.

A. Well, Shirley had borrowed money from me.

Q. How much?

A. Fifty and \$100 or so at a time, until she owed me around \$2000, and at the time she gave me this deed she said, "If you will give me \$1000

(Testimony of George Clayton.)

I will deed you back the place—the property.” Which I did.

Q. And you received that deed?

A. Yes, sir.

Q. Now then, will you explain the deed, Exhibit “F,” dated May 16th, from yourself to Shirley Doores?

A. Well, we had a little misunderstanding—This one here—Shirley Doores wanted the place back. She told me a friend of hers by the name of Al Lindley sold some property and she had the money and wanted to buy the place, and I said, “All right; I will sell you the place for \$3000,” and she had me go and get this deed, and when I gave her the deed she was supposed to have the money with her, but she had \$1250, which she gave me, and she said, “I will get you the rest of the money tomorrow,” and she stopped and studied and said, “If you will give me your interest in the furniture and the place—” she said, “There is a mortgage on the place, too” and said “Yes.” [371] And we looked it up, and it was \$1250, and she said, “If you will give me your interest in the furniture, tomorrow I will give you \$3000, and take this \$1250 and go and pay the mortgage off, because I want the place clear.” So with this \$1250 I goes and pays the mortgage off, and she was going to give me the \$3000.

Q. Did you get it? A. Not yet.

Q. What happened with reference to Shirley next day? Where did she go?

(Testimony of George Clayton.)

A. The next day——

Q. Or around that time?

A. Either that day or—I still believe it was that day—I wouldn't say for sure—She went to the hospital, so she told me. She said, “You stay and take care of the place and come and see me and bring me what I want”—she meant like cigarettes and candy—“when when I come out of the hospital I will get you the \$3000. I have the money,” she said. When she gets out of the hospital that night—she got out in the evening—the next day she was going down and get me the money, but that day she got arrested.

Q. Were you at the house the day she was arrested?

A. Yes, sir; I was.

Q. And before that time did Ed Kelly come to the house?

A. Yes, sir. [372]

Q. Will you relate to the jury what occurred when he came out.

A. Well, Shirley was there. That was the next day after she got out of the hospital, and her doctor was there, Dr. Sells, and they were sitting there talking when Kelly knocked on the door and he come in about six miles an hour, and he asked me—He called me in the back room, and he said, “Has the bulls been out here?” That is the way he stated it—“bulls,” and I said, “No,” and he said, “We are all going to get arrested,” and I said, “For what?” and he said, “Why, that Coeur de'Alene proposition.” He said, “Bunny called me up awhile ago and I went up and saw him and

(Testimony of George Clayton.)

he told me to get on the train and get clear out of the country;" that Shirley was going to be arrested and I—George—me—was going to be arrested, and I said, "Why am I going to be arrested?" and he said, "That is what I asked Bunny," and he said, "The only answer I could get was if Shirley goes to the pen George might as well go, too, because I don't like him." About that time Shirley came in and said, "Come here, Kelly. What is it?" and he said, "It is about the doctor at Coeur d'Alene," and she said "Shu! Keep still. I will talk to you," and she took him in the bedroom. I don't know what the conversation was, (but when they come out she said, "We have got to go to Coeur d'Alene right now." The doctor had left in the meantime and Kelly spoke up and said, "Well, [373] I don't know whether Bunny has given me the run-around, trying to get me out of town, or whether Bunny has stooled on us. What do you think about it, Shirley?" and she said, "My God, I don't know. We will have to go to Coeur d'Alene and find out," and Kelly stated, "If I thought Bunny had stooled on me I would go down town to the hotel and get my gun and kill him," and she gets ready and she gets in her car and her and Kelly goes to Coeur d'Alene, and they gets arrested while they was over there.

Q. You speak of her car. When did she show up with that automobile?

A. Well, that was sometime the first of May.

(Testimony of George Clayton.)

I would say along about the 5th or 6th or 4th or 5th.

Q. Did you ask her about the automobile?

A. I did.

Q. What did she say and what did you say to her?

A. Sam Lavin and I was in the house. I hadn't saw Shirley for a day or so. We was cooking supper and Shirley drove up in this car, and in the car was Bunny Doores and Bunny Doores' wife. I said to Shirley, "Where did you get the car?" and she said, "A friend of mine from Butte, Montana, is here and left the car with me, and is going to be gone to California three months, and I am to keep the car."

Q. What developed later on? [374]

A. I never knew the difference until about, oh, three weeks or something like that, I guess—maybe it wasn't that long. It was some time before the arrest in May, in the mail box was a certificate of title, a registration card, I should say, made out to W. E. Doores, and said, "Shirley, you bought that car." "Oh, yes, yes; I bought it."

Q. Did you ask her any more about it?

A. No, I don't believe I did.

Q. What is that?

A. No, I didn't ask her any more, I don't think. I don't remember.

Q. Did any conversation ever take place at your house when Kelly and Bunny came there and claimed that they hadn't got a fair split of the

(Testimony of George Clayton.)

money from Dr. Teed, and you were made and something was said by Kelly about putting the finger on you, and you said, "Go ahead, put the finger on me?" A. No, sir.

Q. Did you know anything positively about what was going on until this occasion that you testified to concerning the three of them having the words in your house when you were called in?

A. Well, I didn't even know up until the date I was arrested what it was all about, because when Kelly and Bunny come back from Coeur d'Alene, Bunny said, "Kelly, we might as [375] well go; that \$14,000, we ain't going to get a nickle out of it," and Kelly said, "Yes, I guess we will, too, sometime," and Bunny said, "What I am going to do is to do some squawking, and——"

Mr. Connelly: I object to that.

Mr. Smith: That is repetition. He has testified to that.

The Court: Yes.

Q. (Mr. Smith): How long have you been laid up with that bad leg?

A. I have been this way for very near nine months, I think.

Q. About November 20th, just the other day, did you have a visit at your house when you were laid up with your leg, from Robert Doores?

A. Yes, sir.

Q. And Bunny Doores? A. Yes, sir.

Q. What time of day was it?

A. It was in the morning sometime.

(Testimony of George Clayton.)

Q. Will you relate to the jury what occurred on that occasion.

A. Well, Bob Doores and Bunny Doores came out to the house. I was laying there and they come in and I recognized Bob Doores. I think I only seen him once before.

Q. You have seen him only once before?

A. Yes, sir; one time before. [376]

Q. When was that?

A. Sometime last winter, sometime. I wouldn't say the date. But I looked up and here was Bunny Doores, and I said to Bunny, "What do you want here?" and he said, "I want to talk to you," and I said, "I don't want to talk to you," and then he started out to say how sorry he was, and he said, "I know I have treated you wrong; I have lied about you and everything, but I had to do it to clear myself," and he said, "If you will let me have enough money to get out of the country, I won't testify agin you," and he said, "It will help me, because if I am caught they will send me back to Walla Walla for fifteen years," and I said, "Bunny, there is the door," and he started talking some more, and I said to his brother, "Take him out of here."

Q. Have you ever at any time in your life used narcotics of any character?

A. No, sir.

Q. Did you ever have any difficulty with Bunny over narcotics?

A. No, I never had no difficulty with him over narcotics. The only difficulty I had was——

(Testimony of George Clayton.)

Mr. Connelly: I submit that he has answered.

Q. Did you finish your answer?

A. I never had no difficultly with him over narcotics.

Q. You were going to say the only difficultly you had was over—[377]

A. When he stole my ring.

Mr. Smith: I think you may cross-examine. There may be other matters, but I will have to go through my notes.

The Court: I would like to ask about this ring.

Examination by the Court:

Q. You got the ring referred to in this deed from Shirley. That is the one he tried to steal from you?

A. Yes, sir.

Q. And this deed you got February 4th?

A. Yes, sir.

Q. Was that the same ring you get from Shirley?

A. Yes, sir; the same ring; the only and only.

Q. And you delivered this deed on that day?

A. That is right.

The Court: Will you read back his testimony about the ring.

(Reporter read testimony of this witness as requested by the Court.)

Q. If Shirley gave you this ring the 4th of February, and she had been in Montana for several months, and you and he were living out there together, I will ask you how it came about that he

(Testimony of George Clayton.)

attempted to steal this ring from you before Shirley got back from Montana?

A. I was wearing the ring. She let me wear the ring.

Q. You were wearing the ring? [378]

A. Yes, sir.

Q. It was her ring?

A. Yes, sir. She let me wear it.

The Court: All right. That is all. It was really his sister's ring he was stealing from you?

A. Yes, sir.

Q. It was not your ring? A. No, sir.

Q. At that time you had not had the transaction with her about the ring? A. No, sir.

Q. He was stealing his sister's ring from you and not your ring? A. Yes, sir.

The Court: Go ahead.

Cross Examination

By Mr. Connelly:

Q. When did you deliver this deed dated May 16, 1944, to Shirley Doores?

A. On the same date.

Q. And when did she deliver you any money on connection with that?

A. When I gave her the deed.

Q. How much money? [379]

A. Twelve hundred and fifty dollars.

Q. On June 2nd you conveyed this property to Carl Caplan by warranty deed?

A. Yes, sir.

(Testimony of George Clayton.)

Q. And Mr. Caplan still has that deed?

A. Yes, sir.

Q. This transaction was a nullity, was it not?

Mr. Smith: I object to that.

The Court: Sustained.

Q. When did you learn that Shirley had never recorded this deed?

A. She told me she wouldn't record the deed until she paid me the money.

Q. When did she tell you that?

A. When she gave me the \$1250.

Q. How many bedrooms are there in that house out there? A. Two.

Q. One of them is a porch of the house, is it not, screened in? A. No, sir.

Q. Did Shirley ever live in the front room of that house?

A. No. She lived in her own room.

Q. She left all her clothes and toilet articles, cosmetics, in the house, in the front bedroom, did she not, and they were there on the day she was arrested?

A. Most of her stuff was in the front room. She kept them [380] all over the house.

Q. In the front room where you slept?

A. Yes, sir. That is where the closet was.

Q. And her cosmetics and toilet articles she kept in the front bedroom, too, did she not?

A. Some.

Q. How long do you say you have lived with

(Testimony of George Clayton.)

Shirley Doores in the common law relationship of husband and wife?

A. We have been together—I met her around five years ago.

Q. And you have lived together as husband and wife since that time?

A. Well, she has not been with me—I would say she has been with me not more than five or six months out of the five years that we have been together.

Q. When did you buy this house in the valley?

A. September sometime, in 1943.

Q. And she helped furnish it?

A. Yes, sir.

Q. And you lived in it from then until when?

A. Until now.

Q. And prior to that where have you and she lived together?

A. Different hotels.

Q. Name some of them.

A. I stayed at the Pacific Hotel. She wasn't there very much of the time. She was on the Coast. [381]

Q. During any of the time you lived there did she live with you as your wife?

A. Well, I had the room rented——

Q. Representing herself as your wife?

A. I don't think there was nothing said about that. I had a room in my name and she would come and stay one day and be gone two or three months.

(Testimony of George Clayton.)

Q. What other hotel did you and she live in together as husband and wife?

A. None here.

Q. In what other places did you and she live together? A. We was in Seattle.

Q. How long?

A. And we had two rooms there, I believe. I am sure we had two rooms there.

Q. At what place?

A. At the Gatewood Hotel.

Q. How long did you and she live at the Gatewood Hotel? A. I couldn't say.

Q. Approximately?

A. I couldn't tell you that, either.

Q. How long did you live in Seattle?

A. I was there about a year.

Q. How long to your knowledge has she been a morphine addict?

A. Well, I would say when I first discovered she was using [382] narcotics was probably after I was with her, oh, around a year, a year before I knew she was using narcotics. I believe that is right.

Q. When did you discover she was a user of narcotics?

A. Well—When did I discover it?

Q. Yes.

A. Well, Shirley never let me know. She kept it very secretive from me.

Q. When did you discover she was a user of narcotics?

A. I guess after I was with her about a year.

(Testimony of George Clayton.)

Q. And that was four years ago?

A. I imagine.

Q. And to your knowledge has she been a user of narcotics from that time to the present?

A. She has used it and been off of it, and I tried to help her.

Q. For what period of time has she been off it.

A. She has been in jail in different places. Three or four months in Seattle, and in jail here, and then she would be off——

Q. The city or county jail?

A. The city jail here.

Q. For a few days or a month?

A. For a month or two.

Q. Occasionally? [383] A. Yes, sir.

Q. In Seattle for a few weeks?

A. I think she was three months in Seattle in jail.

Q. At one time? A. Yes, sir.

Q. And the rest of the time when she was not in jail she was an addict?

A. She was on trips. She would be gone two or three weeks or a month at a time and I never knew where she was.

Q. How long have you worked at Moore's?

A. I have worked there about a year and a half, I think.

Q. In what capacity? I did not understand what your duties were. Do you have charge of it?

A. No, sir. Mr. Smith said I had charge, but

(Testimony of George Clayton.)

I didn't have charge. I worked there the same as the rest of them, but I got a percentage.

Q. You got what?

A. A percentage of the games.

Q. Of the winnings?

A. Yes, sir. For a while there was three or four of us, and I got twenty-five per cent, and later I got half, besides my wages.

Q. Were you getting half in April?

A. Yes, sir; I was.

Q. When you cashed this check of Lyons, did you pay Moore [384] half of the \$800?

A. I paid Bill Bowers half. Bill Bowers had the gambling.

Q. When did you pay him his half, before or after you cashed the check?

A. Afterwards. He had something like \$600 or \$800 he cashed too. I think it was \$600, from the same man, besides some cash.

Q. Did you have an interest in that?

A. Yes, sir.

Q. And was it all in a game you and Lyons had been in?

A. Yes, sir.

Q. When did you give Bowers the \$400?

A. It was when I cashed the check at that time that he took half, after the expense was paid.

Q. You cashed the check Saturday the 8th of April. When did you pay Bowers?

A. I wouldn't say for sure.

Q. Did you pay him between then and Wednesday, the 12th?

(Testimony of George Clayton.)

A. Yes, sir, I did, but he cashed \$600, I believe, too.

Q. Did you pay him between that Saturday, the 8th and—did you pay Bowers his \$400 between the 8th and the 12th of April, when you deposited the \$1050? A. That is right.

Q. And you did pay him between those dates?

A. That is right. And there was some cash besides the check. [385]

Q. When you gave Caplan the deed on June 2nd, did you tell him Shirley had a deed to the place? A. Yes, sir.

Q. And she had a \$1250 interest in the place?

A. Yes, sir; that is right. And I also told him she had not recorded her deed, and he took the deed, anyway.

Q. What bond are you under?

A. Ten thousand dollars.

Q. Is that the only security you gave Caplan?

A. I gave him my car—the title to my car.

Q. What time of day did you say Robert and Bunny Doores came to your house on November 20th?

A. It was in the morning. I would say sometime in the forenoon, 10:00 or 11:00 o'clock.

Q. How was Bunny dressed?

A. He had on—I believe a sport jacket. In fact, I didn't pay much attention to his dress.

Q. Was he dressed for the street or for work?

A. He was dressed up for the street.

(Testimony of George Clayton.)

Q. When you went down to Pasco on the first trip can you tell us again what date that was?

A. Well, I couldn't tell you the date.

Q. And is that the time that you say you took \$2000 to buy a place at Pasco?

A. The first trip? [386]

Q. Yes. A. No.

Q. When you went down on the second occasion what date was it?

A. That was the last of April.

Q. Do you have any idea when the first trip was?

A. I was kind of intoxicated on the first trip—we practically all was.

Q. You went down to look for a place on the first trip, did you not? A. No, sir.

Q. What was your purpose in going to Pasco?

A. I don't know; just to see what it looked like.

Q. You and Kelly and this lady, Rita—What was her name?

A. I don't know what her name was.

Q. You said it on the direct examination.

Mr. Smith: I said it.

Q. How long did you stay in Pasco on the first trip? A. One or two nights.

Q. And you did not do anything about looking at a place to buy when you were on the first trip?

A. No, sir.

Q. When did you decide to buy a place at Pasco?

(Testimony of George Clayton.)

A. Well, it was when I quit down here at Moore's Club, which was about the latter part of April.

Q. You quit Moore's the middle or latter part of April? [387] A. Something like that.

Q. And did you have any other place or work to go to when you quit Moore's?

A. I had other things in mind. I wanted to get a place of my own.

Q. You did not have any money to buy a place of your own, did you?

A. I borrowed \$2000, and I had a thousand or \$1500 myself.

Q. You were going to borrow money to buy a place of your own? A. Yes, sir.

Q. From your mother? A. Yes, sir.

Q. Did you find any place in Pasco you wanted to buy?

A. Yes, sir; but they wanted too much money for it.

Q. From the 30th of December, 1943, did Shirley live at your home from then on until the end of April? A. The 30th of December, 1943?

Q. Yes. A. I don't believe so.

Q. Where did she live?

A. Well, she was here and there.

Q. Do you know where she lived?

A. No, I don't. She would be gone for a month or three weeks, and come back and stay one night, and be gone again.

(Testimony of George Clayton.)

Q. Do you know whether or not she was living in Spokane the [388] 30th of December, and through the month of January—the 30th of December, 1943, and January, 1944?

A. She might have been here. I couldn't say for sure, because she was going and coming so much I couldn't say for sure.

Q. In February did she live in the house on Carlisle Avenue? A. She was here in February sometime.

Q. And do you know when she lived there with you—lived at the house?

A. I couldn't say for sure what the date was.

Q. Was it the early part of February or the latter part?

A. I don't believe she was here around the first part. I couldn't say for sure.

Q. In March did she live at the house on Carlisle?

A. She was here for a day or so, I believe, in March.

Q. In April did she live at the house on Carlisle Avenue?

A. Yes, sir. She was here in the first part of April.

Q. And did you live there? A. Yes, sir.

Q. All the time you lived there?

A. Not all the time. Let me see. Up until I took that trip to Pasco, about the 20th or 21st of April, I was there, I believe.

(Testimony of George Clayton.)

Q. Right straight through from the preceding year? A. What do you mean by that? [389]

Q. Did you live there continuously except for the trip to Pasco?

A. Yes, sir. When I was here I lived there, yes.

Q. Shirley kept all her clothes and personal effects at the house all the time during from September, 1943, on until May of this year?

A. When Shirley left she would take a suit case or two. She has got about eight trunks of clothes, and she would take what she wanted, and she would leave. The rest of her clothes was there, yes.

Q. When did you first meet Ed Kelly?

A. Well, somebody hired Ed Kelly.

Q. Approximately when?

A. I am not sure, but I think it was sometime in 1943, in the fall, or something like that— No, I will take that back. It was in the summer. But he wasn't working at our place then. I saw him, but he wasn't working there. I don't know the date.

Q. Do you know about when he went to work at Moore's?

A. I wouldn't say for sure. Bill Ballard—

Q. Have you any idea when you first—I mean approximately—I am not asking for an exact date—about when it was, if you can now remember, when you first noticed Kelly at Moore's as a booster, I think you called him?

A. I would know, but I have forgot, to be sure.

(Testimony of George Clayton.)

Whether he [390] started in the summer to work or the fall has slipped my mind.

Q. Of 1943? A. I think so.

Q. The summer or fall of 1943?

A. There was so many people working there, and coming and going, that I can't remember.

Q. Was Bunny living at your house during the fall of 1943?

A. Yes, sir. He would come—I believe in November sometime.

Q. Did he continue to live there for a couple of months?

A. He lived there until along in February.

Q. Then did Bunny go to work at Moore's, too?

A. Yes, sir.

Q. About when was that?

A. He didn't do much work. He was there part of the time.

Q. What work was he doing?

A. He was a booster in a poker game when he was there.

Q. Did Bunny and Kelly work there at the same time? A. Well, I believe they did.

Q. When was the first time that the two of them were at your home together that you can now recall?

A. I think the first time they come out there was in January.

Q. They came out together? A. Yes, sir.

Q. Was Shirley there then? [391]

A. I wouldn't say for sure. Bunny had a key

(Testimony of George Clayton.)

to the house and when he wasn't working he would take my car and go to the house.

Q. I am only talking about Kelly and Bunny being there together when you were there. I assume you don't know when you were not there. At the times you were there do you say that Bunny and Kelly came there in January?

A. They was there several times.

Q. When you were there?

A. Yes, sir. And I think they were there when I was there twice.

Q. Several times?

A. Once or twice, I believe.

Q. Is it several times or once or twice?

A. I can't just remember.

Q. And were you working at Moore's also?

A. Yes, sir, I was.

Q. As a matter of fact the three of you were quite intimate friends—you, Bunny and Kelly?

A. Well, I didn't know Kelly too well. He worked at the place. I thought a whole lot of Bunny up to the time he did what he did regarding the ring.

Q. You were fairly intimate friends, the three of you? Were you or were you not?

A. Bunny and I was friends. [392]

Q. And you and Kelly were friendly?

A. I didn't know Kelly so well.

Q. He worked at the same place where you operated the games? A. Yes, sir.

(Testimony of George Clayton.)

Q. And he sat in the games with you as a booster when you played? A. A few times.

Q. More than a few times? A couple of dozen times? A. It could be.

Q. What is a booster.

A. A booster is a person that sits in the poker game when there is no live players.

Q. And plays for the house?

A. That is right.

Q. You say you don't know whether or not Shirley left the house early on the morning of Monday the 10th of April to go anywhere on a bus? A. No, I don't.

Q. Were you home that morning?

A. The 10th of April?

Q. Yes. A. I believe I was.

Q. Did you see Shirley that morning?

A. No, I didn't.

Q. Did you see Bunny? [393] A. No.

Q. What was the occasion you have referred to when you say you were out in the yard and Bunny and Kelly came to your home? A. Well——

Q. When was that?

A. That was sometime in May—the first part. I was out in the yard, and I heard loud talking in the house, and Shirley came to the back door and called me in the house. Do you want me to explain?

Q. Yes.

A. When I came in the house Kelly was sitting there and Shirley here (indicating), and Bunny

(Testimony of George Clayton.)

was standing by the door, and nobody was saying nothing. I wondered where the loud talking was coming from, but I could see something was wrong, and Bunny said, "We might as well go, Kelly; we won't get anything out of that \$14,000; we might as well go," and Kelly said, "There will be something done about it," and Bunny said, "I can do some squawking long and loud" and he went out the door.

The Court: What did Shirley call you in for?

A. I don't know. I heard loud talking, and she came and called me and said, "Come in here quick." I couldn't imagine what it was, and after they left I said, "Shirley, what is this?" She seemed to be peeved and she said, [394] "It is none of your business, and it doesn't concern you, and it doesn't make any difference," and she started saying something about her brother swearing, or something like that.

Q. You recognized their voices?

A. No, sir.

Q. You had not seen them enter the house?

A. No, sir. I was in the garden.

Q. Did you ever talk with Shirley as to how she made her money—your common law wife—how she made her money?

A. No, I didn't.

Q. You say she gave you \$1250 for this deed that is in front of you?

A. That is right.

Q. In what form was that given you?

A. In fifty dollar bills.

(Testimony of George Clayton.)

Q. All of it fifty dollar bills?

A. That is right.

Q. Did you ask her where she got that amount of money? A. I did.

Q. What did she tell you?

A. She told me a friend of hers named Al Lindley had sold some property and she had the money.

Q. A friend named Al Lindley had sold Shirley's property? A. His property. [395]

Q. How did she get that amount of money from him?

A. I don't know. He was supposed to be a friend of hers.

Q. Didn't you ask her about it? She was your common law wife for five years.

A. She doesn't tell me much.

Q. Did you ask her?

A. Yes, sir. She said she got the money from Al Lindley.

Q. What did she tell you it was for?

A. He was supposed to have sold his property and gave Shirley the money.

Q. Did you ask her what he gave it to her for, or why he gave her \$1250?

A. She wouldn't tell me.

Q. You didn't ask her?

A. I asked her where she got the money.

Q. When did Bunny quit working at Moore's card room?

(Testimony of George Clayton.)

A. Bunny didn't work there very much. He would come down and work one night and then he would be gone a couple or three nights and he would come back and say, "Can I sit down?" and he never worked very much; one, two or three days a week, something like that. Then he was tending bar. I believe he quit and went to tending bar some place.

Q. Do you have a safe deposit box?

A. No, sir; I don't.

Mr. Connelly: That is all. [396]

Redirect Examination

By Mr. Smith:

Q. Was this ring you referred to a man's ring or a woman's ring? A. It was a man's ring.

Q. You mentioned the fact you lived at the Pacific— Had you lived at the Pacific Hotel?

A. Yes, sir.

Q. Did Bunny Doores stay in a room you paid for in that hotel sometime?

A. He—— After I left there I think he stayed a while in this room, and then he left the room and moved out to the house.

The Court: How long did you work at Moore's?

A. Approximately a year and a half.

Q. (Mr. Smith) Some mention was made in the cross-examination to Mr. Caplan. Will you tell us who he is?

A. He is the bondsman that put up the bond for me when I was arrested.

(Testimony of George Clayton.)

Q. He operates the Inland Bond Company?

A. Yes, sir.

Q. And you are at large on a surety bond?

A. That is right.

Q. Do you occasionally carry quite substantial sums of money on your person?

A. Yes, sir. [397]

Q. Has that been your practice for some time?

A. Yes, sir; I do.

Q. You mentioned that you gave Bill Bowers half of the money you collected and he gave you — What did he give you?

Mr. Connelly: I object as leading and suggestive, highly so.

The Court: Just ask what the situation was.

Q. (Mr. Smith) Will you explain the arrangement you had with Bill Bowers again?

A. Here was our deal. Up until along, I would say February, we had another partner in there. There was another one in on the gambling. I got twenty-five per cent then. Then along in February, March and April, I believe—I think that would be right—I got half of the proceeds.

Q. What happened to the other half?

A. Bowers got half and then he cut his part with Ed Moore.

Q. Anything that was taken in by Bowers or Ed Moore, did you get part of it?

A. I had nothing to do with the front end—with the beer.

Q. I mean in the back.

A. Yes, sir.

(Testimony of George Clayton.)

Q. What part of that did you get?

A. Whatever money was taken in in the back end I got half.

Q. Do you recall on this occasion before the 12th of April when you made the deposit of \$1050, where the money came [398] from you made the deposit with?

A. Most of it was this money that this man lost in the card room, Dallas Lyons, and some other money made up the deposit of \$1050 I put in the bank.

Q. That was all in currency?

A. I believe it was.

Q. What was the amount you mentioned you believed Bill Bowers had of this man's money?

A. I can't remember, because there would be five or six hundred dollars in checks, but I think he had five or six hundred dollars that he cashed the next day, or on the shift that I wasn't there.

The Court: He lost about \$1800?

A. Something like that.

Mr. Smith: I think that is all.

Recross Examination

By Mr. Connelly:

Q. You played with this man Lyons and he lost this money? A. I played the first night.

Q. How much did you win from him?

A. I don't recall. I think it was around three or four hundred dollars, is what I win.

Q. And then you played again?

(Testimony of George Clayton.)

A. He played next day— No, I think he played — I wouldn't [399] say whether I played the last day or the first day.

Q. The only checks you took up to cash were the ones you got from Lyons?

A. That was on my shift.

Q. And you didn't get any other checks from Bowers or anyone else when you went up to cash these checks?

A. I had \$800 in \$100 checks.

Q. Why didn't you take all the checks that Lyons lost there?

A. This was on my shift. The next day I didn't have anything to do with it. I think they took about \$600.

Q. Do you gamble there on Sunday, too?

A. Friday was the night I played, I think, because we played two days and then there was another day or so before we played again.

Q. Did you play on Monday?

A. Yes, sir, in the back room.

Q. And you took the checks Lyons gave you and took Lyons to the bank with you to cash them?

A. Yes, sir.

Q. The first day was Saturday, May the 8th?

A. I couldn't say. Maybe it was Saturday.

Q. Was Lyons drunk when he wrote the checks?

A. No. He had been drinking, but he wasn't drunk. He went with me to the bank.

Q. I say, when he wrote the checks and put his signature on [400] them was he drunk then?

(Testimony of George Clayton.)

A. No, sir; he wasn't drunk.

Q. The banker did require that the three Lyons checks be written over again—That is, the fourth check to be written for the total of the three you presented?

A. It seems to me they was wrote out with a lead pencil or the checks had had water or beer spilled on them, but there was something that wasn't right, and Lyons went with me and made out another check for the whole amount, and I cashed that.

Q. He did that at the bank after the banker had suggested it?

A. Yes, sir.

Q. The banker said he had been drinking and his signature wasn't legible?

A. There was something misspelled. I don't know what it was.

(Short recess.)

The Court: Why not call Mr. Berkey and get through with him.

Mr. Smith: Yes, I will do that, Your Honor.

HARRISON N. BERKEY,

called as a witness by the Defendant, first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your name. [401]

A. Harrison N. Berkey.

(Testimony of Harrison N. Berkey.)

Q. What is your profession?

A. Lawyer.

Q. Where have you your offices?

A. In the Sherwood Building.

Q. Are you regularly admitted to practice law in this state? A. I am.

Q. How long have you practiced here?

The Court: Will you admit Mr. Berkey's qualifications?

Mr. Connelly: I certainly do.

Q. (Mr. Smith): How long have you practiced here?

A. About twenty-four years.

Q. Have you any personal acquaintance with George Clayton, this gentleman sitting here in the brown suit?

A. I think so. He was in the office one time.

Q. Did you have any acquaintance with him before that? A. I have not.

Q. Have you had any contact with him since until today? A. No, sir.

Q. I am handing you defendant's Exhibit "F," and I will ask you to examine that document and state if you prepared it.

A. Yes, sir. I prepared this document on May 16th and Mr. Clayton signed it in my office and I notaried it.

Q. Did you deliver the document to him? [402]

A. I did.

Q. Was he alone when he came to your office to get it? A. Yes, sir.

(Testimony of Harrison N. Berkey.)

Mr. Smith: You may cross-examine.

Cross-Examination

By Mr. Connelly:

Q. He stated the consideration to you that you put in the deed? A. Yes, sir.

Mr. Connelly: That is all.

(Witness excused.)

GEORGE CLAYTON,

recalled as a witness in his own behalf, further testified as follows:

Redirect Examination

By Mr. Smith:

Q. Will you endeavor with a little more particularity to give or fix the date that this incident concerning the ring there between you and Bunny Doores took place at your house? Fix the time as near as you can.

A. Well, I know it was February the first part --around the 10th or 12, probably. Because—I am sure it was around there, because he had been in Montana and had been back a day or two.

Mr. Smith: That is all. [403]

Recross Examination

By Mr. Connelly:

Q. What has happened since you testified before the recess that refreshes your recollection?

A. What do you mean?

(Testimony of George Clayton.)

Q. What has brought to your memory now that makes you sure it was the 10th, when before recess you said about the first of February?

A. The first part of February. I am sure it was the first part of February.

Q. Was your attention called to the fact there was a letter which purports to have been written from Montana by Bunny on February 2nd?

A. No, sir.

Q. Have you always had the name of Clayton?

A. Part of the time.

Q. What other name have you had?

A. What do you mean by that?

Q. You say part of the time?

A. I thought you said the ring.

Q. Have you always had the name of Clayton?

A. No, sir. I had my name changed.

Q. When did you have it changed?

A. I think it was two years ago.

Q. You started to tell me the hotel you and Shirley had [404] lived together at, and you mentioned the Pacific and the Gatewood in Seattle. What other hotels during the five years have you lived at?

Mr. Smith: I object as immaterial and incompetent.

The Court: I will overrule the objection.

Mr. Smith: There is also another matter I desire to call to the attention of the court at the bench.

(The following discussion was then had between Court and Counsel at the Court's bench, without the hearing of the jury, to-wit:)

(Testimony of George Clayton.)

Mr. Smith: I have never asked this question of the witness, and I don't know what his answer would be, but suppose the question should elicit the fact that at sometime they have lived in hotels outside the State of Washington, which would show the commission of a separate and distinct crime, which would have no relation to this matter.

Mr. Connelly: I think Your Honor ruled on that same thing in another case. It is the same situation.

The Court: All right.

(The trial was then resumed in open court in the presence and hearing of the jury, as follows, to-wit:)

The Court: Mr. Clayton, if in response to this question there should occur to you any instances outside the State of Washington, you are advised you have the right to refuse to answer the question, on the ground it might [405] incriminate you. Mr. Smith has no information one way or the other, and I do not want the jury to infer that because I give you this warning I have any idea you have ever lived with her outside the State of Washington, but if there are any such instances you do not need to answer that.

Q. (Mr. Connelly): What other hotels have you lived at besides the Gatewood and the Pacific in the last five years?

A. We lived here and in Seattle is all. We never did live out of the state.

(Testimony of George Clayton.)

Q. I didn't ask you that.

The Court: That is all right. You could not be compelled to testify to it if you had.

A. We lived at the Atwood. I had a room there.

Q. I am only asking where you and Shirley lived together.

A. The Atwood.

Q. Here?

A. Seattle. And the Gatewood Hotel; we had two rooms there.

Q. And what others?

A. I believe that is all.

Q. Is the Pacific the only hotel you lived together in in Spokane?

A. Yes, sir. I had a room at the Pacific Hotel for a year and a half or longer.

Q. And she lived with you during that time?

[406]

A. When she was here.

Q. What was your name before you changed it?

A. My father's name was Gunn.

Q. And you changed it in 1942?

A. I think that was when it was.

Q. On that occasion when you said Kelly came in at sixty miles an hour, he said to you and Shirley, "Have the bulls been out here?"

A. He said that, if the bulls had been out here.

Q. And he said, "We are all going to be arrested?"

A. He told Shirley that.

Q. He said, "We are all going to be arrested?"

A. Yes, sir.

Q. And you were there?

A. Yes, sir.

(Testimony of George Clayton.)

Q. And he addressed you? A. Yes, sir.

Q. And he was frightened and came in at sixty miles an hour? A. Yes, sir.

Q. And he said, "We are all going to the Pen?"

A. I don't think he said anything about the Pen. He said, "Bunny called me up awhile ago and said to get on the train and get out of the country. You are going to be arrested, Shirley is going to be arrested and George is going to be arrested" and he said, "Anderson and Albright [407] is going to arrest us," and I said, "What am I going to be arrested for?" and he said, "Bunny said if Shirley is going to the Pen George might as well go, too, because I don't like him."

Q. What else did he say?

A. Then Shirley said something. I don't remember what she did say, but she said, "Kelly, we have got to go to Coeur d'Alene." She got him in the bedroom, and they talked there, and she was flying around and said, "We have got to go to Coeur d'Alene."

Q. Kelly appeared to be very frightened?

A. Yes, sir.

Q. And he did not make any threats toward you at that time? A. No, sir; not to me.

Q. He never did threaten you, did he?

A. Not that I know of. I don't know what for.

Q. But he never did threaten you?

A. No, sir. He never threatened me. He spoke up and he said—He told Shirley, he said, "I don't know whether Bunny has double-crossed me or

(Testimony of George Clayton.)

given me the run-around or whether he has stooled on us," and he said, "If I thought he had stooled on me I would go down to my room—" I believe he said, "and get my gun and kill him."

Q. But when he said "Have the bulls been out here?" he asked you? [408]

A. I answered the question.

Q. You answered it that he addressed you?

A. He said that as he came in the door.

Q. And you answered it?

A. I said, "What bulls? What for?" and he said, "That Coeur d'Alene proposition."

Q. Did you deposit your earnings or winnings every day in the bank account?

A. Well, most of them, I guess. Not all of the money. I kept some and put some in the bank.

Q. Did you deposit your earnings or winnings before you would cut it up with Bowers, or did you deposit it and then give Bowers a check, or how did you handle that?

A. No. We cut the money and I would bank my money around a few days, or deposit what I had.

Q. I take it you deposited only what you made finally net gambling?

A. You mean all I made—I don't quite understand.

Q. That is what I am asking you, if you deposited your own share of winnings after you cut it up with Bowers, or did you first deposit all you would take in and later cut it up with Bowers?

(Testimony of George Clayton.)

A. No, sir; I just deposited my own money.

Q. And where did you and Bowers make the split of the winnings? [409]

A. In the office.

Q. Did Bowers have anything to do with the gambling end of the business?

A. He was the business man.

Q. Who had the front end?

A. Ed Moore and Ed Wilkes, when I first went there, and later Bill Bowers was there and with him and Ed Moore they got a quarter each.

Q. And you got half? A. Yes, sir.

Q. You had control of the games?

A. No. I didn't have control of them. I got a percentage.

Q. You got fifty per cent?

A. When we first started there was another man and I got twenty-five per cent besides my wages.

Q. You got wages all the time you worked there? A. Yes, sir.

Q. How much?

A. Five dollars a day besides percentage.

Q. What did you do with checks you would take in winnings? Did you cash those or deposit them and then split with Bowers?

A. I generally cashed them.

Q. Are these checks which you deposited winnings from gambling? [410] A. Which ones?

Q. These you have marked on your deposit slip for September 29, 1943, a \$145 check?

A. I think that was money.

(Testimony of George Clayton.)

Q. It says "check." It is in the check column.

A. It could be a check, yes, sir.

Q. And the next one, October 7, 1943, \$150, is currency? A. Yes, sir.

Q. And October 20, 1943, deposit \$200, currency, and fifty-six dollars in checks? A. Yes, sir.

Q. And November 17, 1943, you deposited \$200 in currency? And on December 8, 1943, you deposited \$215 in currency, thirty-five dollars checks?

A. This was in bills, currency, and silver.

Q. It says checks and is totaled up.

A. Yes, sir. This is the currency and this is the check.

Q. And December 13th, deposited \$100 currency and twenty dollars check, or checks?

A. Yes, sir.

Q. December 22nd you deposited checks in total \$88.48—No, currency or silver? A. Yes, sir.

Q. January 21, 1943, deposit ninety-five dollars currency, five dollars check? [411]

The Court: Is that 1943 or 1944?

Mr. Connelly: It says 1943, but the typed portion says 1944.

Q. On February 1, 1944, you deposited \$400 in currency and checks \$34.24 and \$10?

A. Yes, sir.

Q. And February 11, 1944, currency \$150 and checks \$65.35 and \$44.49? A. Yes, sir.

Q. On February 24, 1944, you deposited \$120 currency? A. Yes, sir.

(Testimony of George Clayton.)

Q. And on February 28, 1944, you deposited \$500 in currency. And on April 2nd—you testified about this—you deposited \$1050 currency, and May 5th you deposited \$2000 in currency?

A. Yes, sir.

Q. My question is, did you cut up the checks that were secured from winnings or gambling down there at Moore's before or after you deposited them?

A. Lots of times if there was some checks, I would take the checks and deposit them and give him cut in money out of my pocket, and I would take the checks and deposit them, because he never done no banking business—Bowers didn't.

Q. He did no banking business?

A. No, sir. [412]

Q. And you had to deposit all the checks?

A. Not necessarily. Sometimes he would take checks and cash them.

Q. If they were on local banks?

A. Yes, sir.

Q. And if not you would deposit them?

A. I would cash them.

Q. Did you pay him before you deposited them or after?

A. It would just depend. I don't know, because I guess before or after, just depending on the time of day or night.

Q. Who kept track of it?

A. We kept it in the office.

Q. You kept books?

(Testimony of George Clayton.)

A. I don't know whether he did or not.

Q. Did you?

A. No, sir; I didn't. But we would just split it up.

Q. Did you deposit all the winnings in your bank account at any time down there?

A. No, sir.

Q. Both checks and money?

A. No, sir, just my cut, my percentage, my own.

Q. When did you get this \$2000 from your mother? A. Well, I believe the 20th of April.

Q. In what form did you get it?

A. In twenty dollar bills. [413]

Q. What did you do with them between the 20th of April and the first of May when you put them in the bank?

A. Well, I had the money with me when I went to Pasco. I was gone approximately a week, and I packed the money, and I believe when I come back I might have had the money a day or so in my pocket before I deposited it. I am not sure; a few days, possibly.

Q. What bank did your mother get the money out of?

A. I don't know. I don't think she does any banking.

Mr. Connelly: I think that is all.

Mr. Smith: That is all.

(Witness excused.)

(Whereupon, an adjournment was had to the hour of 1:15 o'clock p.m., December 11, 1944, at which time, all parties being present

as heretofore, including all the jury, the trial was resumed as follows, to-wit:) [414]

(Pursuant to adjournment, the court reconvened at the hour of 1:15 o'clock p.m., December 11, 1944, at which time, all parties being present as heretofore, including all the jury, the trial was resumed as follows, to-wit:)

Mr. Connelly: May I ask Mr. Clayton a few more questions on cross-examination? I had no opportunity to check my notes at the last session of the court.

The Court: All right.

GEORGE CLAYTON,

recalled as a witness in his own behalf, further testified as follows:

Cross-Examination

By Mr. Connelly:

Q. Will you tell us again the month that you say Shirley was away from here in Montana or Dakota?

A. As near as I can tell—I wouldn't know the exact date—but I think it was in January or maybe the latter part of December.

Q. I understood you to say she was away three months or three months and a half.

A. I am sure it was two months or something like that.

Q. Do you know when she came back?

(Testimony of George Clayton.)

A. She came back the latter part of January or the first of Feburary.

Q. Where was she living in the month of January?
A. I couldn't tell you. [415]

Q. Was she here from September, or through September, October, November and December, 1943?

A. I couldn't tell you. She was on various trips all the time.

Q. Do you know of her receiving any treatment from Dr. Bailey at Millwood during that time?

Mr. Smith: We object to that as being improper cross-examination. It is entriely outside the scope of the direct.

The Court: Yes, I think so, Mr. Connelly.

Mr. Connelly: He had not fixed the time, but he has fixed it now.

The Court: If it is for the purpose of fixing the time, you want to call his attention to concerning certain things, that is permissable, even though it has not been gone into on the direct examination, but he answered your question "No," so I think I will let the answer stand and not let you pursue it any further. I will only let it stand on the theory it might call his attention to certain things in the same way he would say he remembered she bought a certain piece of furniture, to call it to his attention in fixing a date. That is important here. That is the only reason I will let the question and answer stand at all.

(Testimony of George Clayton.)

Q. (Mr. Connelly): Did you ever drive her out to Dr. Bailey's [416] office?

Mr. Smith: The same objection.

Q. (Mr. Connelly): Did you let Shirley use your car during June, July, August, or September of 1943?

Mr. Smith: That is objected to.

The Court: The objection is sustained. I only let you ask the question on the theory it might recall something that happened last fall or during January or February of this year. With reference to dates that far back I will sustain the objection and strike all of the questions and instruct the jury to disregard them.

Q. (Mr. Connelly): Do you recall that you stated on direct examination that Shirley was not at home when Bunny came to live with you in October, 1943?

A. She was home when he come.

Q. And she remained home after he was there and lived there with you?

A. No, sir. She was on trips and he stayed with me for a long time. I don't know just how long it was.

Q. Was she on any trips other than the one to Montana in the latter part of December or January, that you have referred to?

A. I couldn't say. She never told me where she went.

Q. Was she away?

(Testimony of George Clayton.)

A. I am sure she was away for a period of two months. [417]

Q. And those are the two months you referred to as a part of December and a part of January?

A. I am sure it was.

Q. Was she at home all the rest of the time from the time Bunny came in October? A. No, No.

Q. Where was she?

A. I couldn't tell you.

Q. Was she in Spokane?

A. I don't think so. She might have been here some of the time; back and forth.

Q. Did you see her during that time?

A. It seems to me she took a trip to Seattle—or said she went to Seattle—and I think she was here a day or so, but I don't know what the day was.

Q. Did she continue to keep her clothing and personel effects at your home during that time?

A. A part of her stuff, what she didn't take. I think she had a couple of suitcases with her.

Mr. Connelly: That is all.

Redirect Examination

By Mr. Smith:

Q. This may not be proper redirect examination on this examination, but I want to ask you in reference to the [418] question Mr. Connelly asked you Friday about this change of name. About when was it, to your best recollection, that you had your name changed, about how long ago?

A. You have it there; I think it was two years ago.

(Testimony of George Clayton.)

Q. That was by petition to the Supreme Court of this county? A. Yes, sir.

Q. And for how a time prior to that had you been using the name of George Clayton?

A. Oh, ever since, I think, my mother and dad was married.

Q. Mr. Clayton was married to your mother?

A. Yes, sir.

Q. And that would be how many years ago?

A. I couldn't tell you.

Mr. Smith: That is all.

Mr. Connelly: That is all.

(Witness excused.)

AMANDA VICTORIA CLAYTON,

called as a witness for the Defendants, first duly sworn, testified as follows:

By Mr. Smith:

Q. State your name, please.

A. Amanda Victoria Clayton.

Q. You live in Spokane?

A. Yes, sir. I have lived in Spokane off and on all my life, [419] about sixty years.

Q. And what relationship are you to George Clayton? A. He is my son.

Q. How many other children do you have?

A. Just one.

Q. One other son? A. Yes, sir.

(Testimony of Amanda Victoria Clayton.)

Q. Were you formerly married to a man named Gunn? A. Yes, sir.

Q. Who was George Clayton's father?

A. Mr. Gunn.

Q. And was he likewise the father of your other son? A. Yes, sir.

Q. You and Mr. Gunn are not married now?

A. No.

Q. Whom are you now married to?

A. Mr. Clayton.

Q. What is his name?

A. Earl H. Clayton.

Q. How many years have you been married?

A. To Mr. Clayton?

Q. Yes.

A. About twenty - five — near twenty - five — we were married in 1920.

Q. To your personal knowledge, has your son George used the [420] name of George Clayton for a number of years? A. Yes, sir.

Q. To your personal knowledge, did he change his name, have it legally changed from Gunn to Clayton?

A. Yes, sir. That was my wish.

Q. Directing your attention now to an occasion in the spring of this year, sometime in April or May, I will ask you to state whether or not you loaned your son George Clayton any sum of money?

A. Yes, I did.

Q. How much money did you loan him?

A. I loaned him \$2000.

(Testimony of Amanda Victoria Clayton.)

Q. And on what date did you make that loan to him, to the best of your recollection?

A. It was week or ten days after Easter. I remember that very distinctly—about the 20th.

The Court: Of April?

A. Yes, of April.

Q. (Mr. Smith): Do you remember what date in April Easter was last year?

A. Either the 8th or 9th, or the 7th, 8th or 9th; something like that. I don't remember distinctly.

Mr. Smith: You may cross-examine.

Mr. Connelly: No questions.

(Witness excused.) [421]

ROBERT DOORES,

called as a witness for the Defendant, first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your name, please, to the Court and jury. A. Robert Doores.

Q. What relationship are you, of any, to Shirley Doores and Wesley or Bunny Doores?

A. I am a brother.

Q. Are you older than both Shirley and Wesley?

A. Yes, I am.

Q. Where is your home?

A. Well, I haven't exactly got a home—what you would call a permanent home. I have been fol-

(Testimony of Robert Doores.)

lowing construction work since the war. I have a trailer house I live in on these construction jobs.

Q. Whom have you been employed by in recent years?

A. I have worked for several companies in the last five or six years. I worked for Morris & Knudson the biggest part of the time.

Q. What kind of work do you do?

A. I am a combination man, on heavy equipment, shovel work and drag line, and a cat skinner, running a blade on the highway, heavy Diesel equipment.

Q. Do you work steadily?

A. Yes, sir; I do. [422]

Q. Are you a married man?

A. Yes, I am.

Q. Have you ever been convicted of a felony at any time? A. I have never.

Q. How long have you known the defendant, George Clayton?

A. Well, I have known him since about a year now. It has been about a year I was in Spokane here and I stopped and visited Shirley a day or so and I met Mr. Clayton while I was here.

Q. Is that the first time you saw him?

A. Yes, sir.

Q. And the only time until you came here recently? A. That is right.

Q. When did you come to Spokane on this occasion?

A. I came in here the 17th of November.

(Testimony of Robert Doores.)

Q. When you came here where did you come from?

A. Montana. I had been up there visiting some friends and my sister.

Q. Were you on your way from Montana to Spokane?

A. Well, I was going back to Portland, where I work. I belong to No. 701, operating engineers.

Q. When you came into Spokane on the 17th of November where did you go, first?

A. When I came into Spokane I was trying to find Shirley, my sister, and I couldn't locate her. She was out of town, [423] and somebody said she was down on the Coast someplace, and then I tried to find Clayton and he was also out of town, and I finally found my brother, Bunny Doores, at the Pacific Hotel.

Q. When did you go to the Pacific Hotel at that time?

A. It was that evening. I got in here about 10:30, I guess, the night of the 17th, and about midnight was the time I found out where Bunny was, and it was a little after midnight by the time I got up to the hotel.

Q. Did you attempt to register for a room at the Pacific Hotel? A. Yes, sir.

Q. Could you get one?

A. No, sir; there was no vacancy.

Q. Did you put in an application for a room there? A. I did.

(Testimony of Robert Doores.)

Q. What did you do, then, for accommodations that night?

A. I stayed with my brother, Bunny Doores.

Q. What room did he have at the Pacific Hotel?

A. If I remember right, the number of his room was 248.

Q. What did you and he do that evening after you found him?

A. Well, we went to bed early. He had just come in from work. He worked at this aluminum plant, I guess, and he had just come in from work, and he changed his clothes and we went down to the Rockaway Cafe and had some supper. [424]

Q. Did you go with him?

A. Yes, sir; I did.

Q. And after you came back where did you go—or after you finished eating where did you go?

A. We came right back to the room at the hotel.

Q. You stayed with him that night, did you?

A. Yes, sir.

Q. That evening after you returned to his room, 248, at the Pacific Hotel, or I should say in the early morning, did you have any conversation with your brother, Bunny, about this case?

A. Yes, sir. We talked about it.

Q. Will you state whether or not you asked him anything about the case.

A. Yes. I asked him about it.

Q. Will you state just exactly what the conversation was between you and Bunny Doores.

Mr. Connelly: That is objected to.

(Testimony of Robert Doores.)

The Court: You will have to ask the question in the same form.

Q. (Mr. Smith): Mr. Doores, on that occasion which I have referred to, I will ask you to state whether or not the following conversation in substance and effect did not occur between you and your brother, Bunny, or Wesley Doores: That you started discussing this case, and you [425] told him you were interested in the case because of the fact that your sister, Shirley, was mixed up in it, and that he, Bunny, was mixed up in it, and in that conversation you asked him what part in the case George Clayton had played, and what he was supposed to have done, or how come he was in it, and that Bunny laughed when you asked him that, and he told you that Clayton did not have any part in the case at all; that Bunny and Kelly were framing George Clayton—did that occur?

A. Yes, sir. That is what he said.

Q. And at the same time and place I will ask you if your brother did not state that if Shirley had to go to the penitentiary on this deal, Clayton might as well go with her, and you said to him at the time that statement was made, in substance and effect, "Bunny, that doesn't seem right to me." And he said to you, "I think George kept Kelly and me from getting our share in this deal, and that is one reason we are framing him, and another reason is, I don't like him." Did that conversation occur between you and your brother, Bunny?

A. Yes, sir.

(Testimony of Robert Doores.)

Q. Did he make those statements to you?

A. Yes, sir. That is exactly what he said.

Q. And in the same conversation if your brother did not state to you, "I have to go up there to appear in court, after [426] this double-crossing has been done; I don't know how to keep from appearing. If I had the money I would leave town."?

A. That is right.

Q. And then he said to you, "How much money have you got?" And you said in substance, "I have a little money with me," and he said, "Well, do you have enough with you so you could loan me \$100?" and you said, "What do you want with it?" and he said, "I would buy a railroad ticket just as far as I could go. That would be one way of keeping from appearing up there, and I would be glad." Did he say that?

A. That is right. That is exactly what he said.

Q. Did you tell him at that time that you did not have enough money to let him have the \$100 and still be able to finish your trip, wherever you were going?

A. That is right.

Q. And I will ask you to state whether or not that same occasion if he told you one reason he wanted to get out of here and leave was because he was afraid he would be sent back to Walla Walla?

A. That is right.

Q. Now, Mr. Doores, directing your attention to an occasion the following—I will ask you to state what day of the following week it was that you and your brother, Bunny, [427] went down to the Turf

(Testimony of Robert Doores.)

Cafe on Main Avenue, in the morning, where you discussed something about going out to George's house?

A. That was the morning of the 21st, because it was the same afternoon I registered for a room at the hotel—the first vacancy they had—the 21st of November.

Q. While you were at that place did Bunny ask you to take him out to George's place?

Mr. Connelly: That is objected to. The question put to Bunny referred to the 20th of November.

Mr. Smith: That is true, but I think the question I asked Bunny was sufficiently inclusive so it might refer to anytime.

The Court: I will sustain the objection.

Mr. Smith: Your Honor will notice the statement "He never took me out to George's place."

The Court: Yes.

Mr. Smith I think on that basis, even though I was mistaken on the date myself when I asked the question of Bunny, that statement would permit the introduction of this evidence.

The Court: The previous answer is, "I don't know."

Mr. Smith: The answer is, "He never took me out to George's place."

Mr. Connelly: Some people use the word "never" [428] instead of "not."

The Court: I will sustain the objection.

(Testimony of Robert Doores.)

Q. (Mr. Smith): Mr. Doores, did you have a brother who died in the spring of 1944?

A. Yes, I did.

Q. What was his name?

A. Oscar Raymond Doores.

Q. Do you know the date of his death?

A. He took sick, I believe it was, on the 4th of March and died on the 5th.

Q. The 5th of March, 1944?

A. Yes, sir.

Q. Mr. Doores, did you ever take your brother, Bunny Doores, out to George Clayton's house?

A. Yes, sir, I did.

Q. What was the date you took him out there?

A. It was the 21st of November.

Q. 1944? A. Yes, sir.

Q. Were you present at a conversation between your brother and George Clayton?

A. Yes, I was.

Q. On the way back from that trip to George Clayton's house, did your brother make any statement to you concerning what he would do in the event of George Clayton's lawyer [429] cross-examining him about narcotics?

A. Yes, he did.

Q. What did he say?

Mr. Connelly: That is objected to. I do not find any question put to Bunny Doores in connection with that.

Mr. Smith: The last page.

Mr. Connelly: I will withdraw my objection.

(Testimony of Robert Doores.)

Q. (Mr. Smith): I will ask you if on that occasion he did not state to you if the lawyer started cross-examining him about narcotics or if he used dope, he would tell him all the dope he used he got from George Clayton?

Mr. Connelly: That is objected to for another reason. It is not competent, relevant nor material. There is no testimony by the witness he ever got any narcotics from George Clayton.

The Court: The objection is overruled.

Q. (Mr. Smith): You may answer.

A. That is right. That is what he told me.

Q. And I will ask you if the night before this trip you have referred to, around 7:00 o'clock in the evening, at the hotel room, that you were talking about the case, and that Bunny—You stated to Bunny that you felt sorry for all of them to be mixed up in a deal like that, and it looked very bad, and you stated to him, "Bunny, I can't figure out for the life of me how George got mixed up in this. [430] He must have had something to do with it or he would not be mixed up in it." And Bunny said to you, "He didn't have anything to do with it. When they came out to pinch him he didn't know what they were pinching him for."?

A. That is right. That is what he said.

Mr. Smith: May I ask about this, in the middle of Page 6, again, Your Honor, a further statement about that trip, where he says, "I never was out to see George at all"?

The Court: I haven't ruled on your right to

(Testimony of Robert Doores.)

cross-examine on anything that may have occurred out there. I think that the answers you pointed out to me have covered that, but it did not cover the previous conversation on which there was a statement made.

Q. (Mr. Smith): On this trip that you have referred to on the 21st of November, out to George Clayton's house, I will ask you whether or not you did not get out of the car and go to the door and knock, and George hollered for you to come in, and when you and your brother, Bunny, went in he was lying on the couch—that George was lying on the couch because his leg was hurting him—and as soon as you walked in, George said to Bunny, "What do you want here, Bunny?" and Bunny said, "I have come out to talk to you, George." And George said, "I don't want to talk to you" and Bunny said, "Now, George, I am sorry everything has [431] happened as it has, and I am trying to get you squared off, if you will let me talk long enough to explain it" and Bunny asked George for a loan of money and stated he would leave, because he and Kelly were framing him. Did that occur?

A. That is right.

Mr. Connelly: That is objected to. The question was not put to the Witness Bunny in that fashion, and the date of the transaction is not the same as was given when he questioned the Witness Bunny Doores.

The Court: On the question of the date I have ruled against the Government, in the light of the

(Testimony of Robert Doores.)

statement that his brother never took him out, the question of one day or the other, I have ruled against the Government. The first part of the question is wrong, when he talked about going in the house and George lying there, that is not impeaching. He testified to that independently, and without being led. The second part of your question is not in the exact language of the question. My ruling is on the question of dates. it is all right. I will sustain the objection to the first part of your question, and when you get to the point of the impeaching question, ask it in the language of the question you put to Bunny.

Q. (Mr. Smith): When you and your brother drove out to George Clayton's house on the morning of November 21st, tell what [432] happened out there, up to the time of any conversation between Bunny and George. Tell what happened out there up to the time of the conversation. In other words, what happened when you got there?

The Court: Not what was said, but what you did.

A. We drove up to their house and we got out of the car and I went to the door and knocked, and George hollered for us to come in, and he was lying there on the couch with a pain in his leg—he couldn't hardly walk, is was bothering him so bad—and I opened the door and we both walked in.

Q. (Mr. Smith): As soon as you had walked in, I will ask you to state whether or not George said to Bunny, "What do you want here, Bunny?"?

A. That is right.

(Testimony of Robert Doores.)

Q. And Bunny said, "I have come out to talk to you, George" and George said, "I don't want to talk to you" and Bunny said, "Now, George, I am sorry everything has happened as it has and I am trying to get you squared off, if you will let me talk to you long enough to explain it."?

A. That is right.

Q. State whether or not Bunny asked George for a loan of money that he would like to have.

A. That is right.

Q. Oh, yes. And then Bunny stated to George, Clayton that [433] he knew he and Kelly were framing him?

A. Yes, sir; that is true.

Q. Oh, yes. And then Buny stated to George, "If you will loan me enough money to leave, I will guarantee you I will not be here for any trial to appear against you."?

A. That is right.

Q. State whether or not George said to Bunny, "I wouldn't loan you a nickel; I wouldn't give you anything. Get out of my house and stay out."?

A. That is right.

Mr. Smith: You may cross-examine.

Cross Examination

By Mr. Connelly:

Q. Where did you come from when you arrived in Spokane this last time? A. Montana.

Q. And do I understand you were on your way to take work in Portland?

A. I was going back to work in Portland.

(Testimony of Robert Doores.)

Q. Where were you going back to work, what job?

A. I was going back on the Coos Bay dredging.

Q. When were you supposed to be there?

A. I was supposed to be there almost a week ago now. I should have been there. [434]

Q. You had a job on the Coos Bay dredging?

A. Yes, sir.

Q. And you left Montana to go to Portland to ship out to it? A. Yes, sir.

Q. When were you supposed to go to work, two weeks from now?

A. About. They had equipment and it had to be overhauled, and there was no definite time when we would go to work. Parts were hard to get, and you would plan on going to work on Monday and maybe you would not get no parts for two weeks.

Mr. Smith: May I ask another question before we go further?

Mr. Connelly: Yes.

Direct Examination (resumed)

By Mr. Smith:

Q. Mr. Doores, I want you to pay particular attention to this question: I will ask you whether or not you in a conversation with your brother, Bunny Doores, on November 29th or 30th, asked him what Shirley would probably get out of this, and you stated that you could get some money for him to go on as far as Boise, and after he got to Boise you could get some more money for him to go on East.

(Testimony of Robert Doores.)

Did you make any such a proposal or suggestion or statement to your brother? [435]

A. No, I did not.

Mr. Smith: All right, Mr. Connelly.

Cross Examination (resumed)

By Mr. Connelly:

Q. When you left Montana what city did you leave from? A. Martindale.

Q. Do your relatives live there?

A. Yes, sir.

Q. How long had you been at Martindale?

A. I had been there, I guess, I will say a week. I don't know exactly. From around a week. I visited with my sister.

Q. Was your sister, Shirley, at Martindale any time that you were there? A. No.

Q. And when you came to Spokane on the 18th of November—— A. The 17th.

Q. And you got in here at 10:30 at night?

A. Something around that time.

Q. Were you driving a car?

A. Yes, sir.

Q. What effort did you make to reach your sister? Did you go out to her home?

A. I went out there. [436]

Q. To 7225 East Carlisle, in the valley?

A. Yes, sir.

Q. You had been there before?

A. I was was there once.

Q. When was that?

(Testimony of Robert Doores.)

A. That was a year ago when I was there once.

Q. Did you remember the number or did you write it down or did you have a letter giving it?

A. I had been out there before, about a year ago now, not just a year ago now. I wouldn't say for sure, but it was in the first part of December.

Q. You corresponded with your sister since you have been away? A. No, sir, I haven't.

Q. Did you have her address written down somewhere? A. No.

Q. You remembered the street number?

A. I remembered the place by being out there.

Q. By being there once before. And you say you went to that house that night when you got in here?

A. Yes, sir.

Q. Whom did you see there?

A. There was no one there. The lights were out and the house was locked and when I knocked, no one answered.

Q. And then you came to town? [437]

A. Yes, sir.

Q. Where did you go when you came down town—did you go directly to the Pacific Hotel?

A. No, sir; I went in the Turf and inquired about Shirley and I asked several fellows before I found a fellow that knew her.

Q. How did you happen to go to the Turf?

A. That is—I don't know. When I was here a year ago we were in the Turf and at Moore's pool hall.

Q. Which one did you go in?

(Testimony of Robert Doores.)

A. I went in the Turf and tried to find Shirley and I couldn't find anybody in there that knew her, and I went across the street to Moore's pool hall, I guess they call it.

Q. How did you happen to go there?

A. That is where George was working when I was here a year ago.

Q. But you went to the Turf first instead of going where you knew George was working?

A. One reason I did, I parked my car right in front of the Turf and I dropped in there a minute, and I couldn't find anybody in there that knew Shirley and I went across the street.

Q. Did you find anyone over there who knew her?

A. Yes, sir. [438]

Q. Were you told where she was?

A. He said he didn't know. He said as near as he knew, she was on the West Coast.

Q. Did you inquire for Clayton?

A. Yes, sir.

Q. And then you went to the Pacific Hotel?

A. Yes, sir.

Q. Was your brother in his room when you arrived at the Pacific Hotel?

A. That is right.

Q. And that was about midnight?

A. Yes, sir. I would say it was a little after midnight.

Q. The fact of the matter is, is it not, that you were sent to the Pacific Hotel by George Clayton and your sister to contact Bunny and be with him and talk with him about this case?

A. No.

(Testimony of Robert Doores.)

Q. You did contact him, didn't you?

A. Later when he come back to town.

Q. You contacted him that night when you went to the Pacific Hotel? A. I did not.

Q. I thought you said he was there in his room?

A. Yes, sir, Bunny. You said Clayton.

Q. You contacted Bunny? [439]

A. Yes, sir. I stayed with Bunny that night.

Q. And were you not sent to contact Bunny by your sister and George Clayton?

A. No, sir. Neither one of them was in town.

Q. Who first started talking about this case, you or Bunny?

A. I don't know which one it was.

Q. I thought you said you asked him about this case in response to a question by Mr. Smith?

A. We started talking about the case. I was interested in it because I was interested because she was in it.

Q. Where had you heard about the case?

A. I read it in the papers.

Q. The Montana papers?

A. No, sir; in the Portland papers.

Q. When was that?

A. That was, I believe, last spring, when this first happened, when this trouble first came up.

Q. You did not come up here then?

A. I was working and I couldn't get away.

Q. After you quit working you did not come here then?

A. No, sir. There was nothing I could do.

(Testimony of Robert Doores.)

Q. Did you go through Spokane to go to Montana to visit your relatives and friends?

A. No, sir.

Q. Where did you go from and how did you get to Montana? [440]

A. I went from Portland to Boise and from Boise to Montana.

The Court: When did you last hear from Bunny?

A. We don't correspond and I guess the last time I seen Bunny to talk with him was at my brother's funeral in Montana.

The Court: In March?

A. Yes, sir.

The Court: And you had no correspondence with him—Did you have correspondence with Shirley about Bunny?

A. No.

The Court: How did you know that Bunny lived at the Pacific Hotel?

A. A fellow in Moore's told me.

The Court: That was the first information you got?

A. Yes, sir: I didn't know where any of them was; when I got to the house that evening it was dark and naturally I come up town to inquire.

The Court: Go ahead.

Q. (Mr. Connelly): Did you endeavor to register for a room at the Pacific Hotel before you met Bunny, up there that night?

(Testimony of Robert Doores.)

A. No, I didn't. I thought if Shirley was in town and I could find her I would go to the house and stay with her.

Q. I understood you to say on your direct examination when you went to the Pacific Hotel you put in an application for [441] a room, but they didn't have any room? A. They didn't.

Q. And then you stayed with Bunny?

A. Yes, sir.

Q. Had you seen Bunny before you put in an application for a room?

A. Yes, sir. I talked to him. That fellow said that Shirley was out of town and I thought Bunny would know for sure where she was, and he said as near as he knew she was out of town, and I asked if I could get a room and he said, "I don't know."

Q. How long did you plan to stay here?

A. I just planned to stay here long enough to visit Shirley was all.

Q. This was on the 17 of November, and you are still here? A. I am still here.

Q. When were you subpoenaed as a witness in this case?

A. I don't know, but it was a few days ago when this trial first started.

Q. When did you first see George Clayton during your stay here, this last time?

A. Oh, as near as I can remember, it was around the 19th, I believe, something like that.

Q. Two days after you claimed you went out there? A. Something like that. [442]

(Testimony of Robert Doores.)

Q. Was that before you and Bunny drove out there? A. Yes, sir.

Q. Where did you see George Clayton?

A. At the Turf.

Q. Was that by prearrangement?

A. No, sir. I went there to eat and Clayton walked in when I was eating.

Q. Did you and he discuss this case?

A. No; we did not—not at that time.

Q. Not at all?

A. No, sir. I told him I was sorry for him and the kids, to think they was tangled up, and he didn't seem to want to say anything.

Q. Didn't you tell him what Bunny told you on the night of the 17th? A. Not at that time.

Q. Why didn't you tell him?

A. Because I didn't want to get tangled up in it.

Q. You mean to say that you did not want to get tangled up in it, and you would let a man who your brother told you was innocent, and who was being framed, go on and be framed?

A. After I found out for sure he was being framed, I told him.

Q. But you knew that on the night of the 17th, did you not?

A. He didn't give me all the details and facts. After I had [443] been out to Clayton's house and come back to town and he told me what he was going to say in court, I knew he was framing Clayton. In fact, I went out to the house and told George he was framing him.

(Testimony of Robert Doores.)

Q. You just testified in response to questions by Mr. Smith that on the first night you stayed with Bunny, which was the 17th of November, that you told Bunny you were interested in the case because of the fact your sister Shirley was mixed up in it and that Bunny was mixed up in it, and in the conversation you and Bunny had you asked Bunny what part in the case George Clayton had played, and what he was supposed to have done, or how come he was in the trouble, and that Bunny laughed when you asked him that, and told you that George Clayton didn't have any part in the case, and that he and Kelly were framing Clayton.

A. Yes, sir.

Q. And when you met Clayton in the Turf two days later you did not tell him those things you claimed Bunny told you on the night of the 17th?

A. No, sir.

Q. And you did not do it because you didn't want to be inconvenienced by being mixed up in it?

A. I didn't know whether Bunny was lying about it or not. I didn't know for sure then until after I went out to [444] George's house, and afterwards in the car, and that bunch of lies he told me in the car, I knew then that him and Kelly were framing Clayton.

Q. Did you not think that Bunny might have been lying when he told you he was framing Clayton and that Clayton didn't have any part in it at all?

A. I didn't know.

(Testimony of Robert Doores.)

Q. And you met Clayton at the Turf and visited with him and didn't tell him that?

A. Another reason I guess I didn't do it, was because there was a fellow with him, and we sat there and talked a few minutes, and him and this other gentleman got up and walked out, and he said he would see me later, and I said all right. I seen he was busy at the time.

Q. When did you learn that Clayton was living out there at the house, on this trip—You say the first night there was no one there?

A. That is right.

Q. And you say later you drove Bunny out there?

A. Yes, sir.

Q. Did Bunny indicate any fear about meeting Clayton in regard to his testifying and giving statements in this case?

A. If he did he didn't say nothing about it.

He did not show any fear about facing Clayton?

[445]

A. I don't know whether he did or not. I don't know what he had in his mind.

Q. Are you still living at the Pacific Hotel?

A. No, sir.

Q. Where are you living now?

A. I am living out at the house with my sister, Shirley.

Q. How long have you been living there?

A. Since the 29th.

Q. Of November?

A. Yes.

Q. And your sister and Clayton have been there

(Testimony of Robert Doores.)

constantly and you were there constantly from that time to the present time?

A. I have been there quite steady.

Q. And you have discussed this case?

A. There has been very little said about the case out there.

Q. When did you go and tell the attorneys in this case these things that Bunny said?

A. I went to Clayton first and told him what Bunny had told me, and I said, "George, them guys is framing you and lying about you" and he said, "Well, I would rather not discuss the case with you. I would rather you would go and see my lawyer, Mr. Smith."

Q. When was that?

A. I don't remember just what date that was. Mr. Smith has [446] it down. I don't know whether it was the next day. I believe it was the next day after I took Bunny out to the house.

Q. The next day after you took Bunny out to the house?

A. I believe it was. I wouldn't say it for sure.

Q. You went to see Mr. Smith?

A. No. It wasn't then I went. I went to see Mr. Smith, but I am not sure. I went out and told Clayton that they was framing him, and he said, "You will have to see my lawyer. I would rather not discuss the case with you" and I said, "Okeh." And I don't remember what time it was that I went to see Mr. Smith.

(Testimony of Robert Doores.)

Q. Was it before or after Thanksgiving you had this talk?

A. It was before Thanksgiving. If I remember right, Your Honor, it was the day I took Bunny out to Clayton's house, when I brought him back to town, and then he said things about Clayton, coming back in the car, that convinced me then he was really framing Clayton, and—— [449]

Q. That was on the 22nd?

A. Yes, sir. I know when I brought my brother back to town we went to the Pacific Hotel and when we went in the lobby the clerk said, "We have a vacancy," and I said, "That is fine." And I took the room and that was the 21st I registered.

Q. And you went out to see Mr. Clayton the next day after that?

A. I think it was the next morning.

Q. And it was on the 29th, or a week later, about the 29th, you went to see Mr. Smith and he was trying a case in Coeur d'Alene?

A. I believe it was. I believe it was two days we waited for Mr. Smith on the case in Coeur d'Alene.

Q. And did you see him on Saturday the 2nd, the Saturday before the trial started?

A. I couldn't say for sure, but it was a few days before the trial started. I wanted to go on home and go back to work, and they advised me to stay.

Q. When did you move out to the Clayton house?

A. On the 29th.

(Testimony of Robert Doores.)

Q. The same day you tried to see Mr. Smith the first time? A. I believe it was.

Q. Going back to the 17th, tell us when you saw Shirley the first time after that. Did you see her while you and [450] Bunny were living together?

A. Thanksgiving Day I think she came back Thanksgiving morning, if I remember right.

Q. And you saw her then?

A. I believe it was. I wouldn't say for sure but I believe it was Thanksgiving Day, because I ate Thanksgiving dinner with her.

Q. So she got there the day before?

A. Yes, sir.

The Court: Any further questions?

Mr. Smith: That is all.

Recross Examination

By Mr. Connelly:

Q. Did you tell Bunny you were satisfied in your own mind he was framing Clayton?

Mr. Smith: I object to that.

Mr. Connelly: He said he discovered it at some later date.

The Court: The objection is overruled.

Q. (Mr. Connelly): The Court says that you may answer the question.

A. I didn't tell him in exactly those words. I told him I didn't think it was right for him to frame a man like that. [451]

Q. At whose suggestion was it that you and Bunny drove out to the Clayton house?

A. Bunny's.

(Testimony of Robert Doores.)

Q. Was that after you had become convinced in your own mind that Bunny was framing Clayton?

A. Yes, sir. I had a good hunch he was framing him.

Q. You said he told you he was framing him on the 17th. What more did you need to convince you, in your own mind?

A. I know Bunny pretty well, and I know he gets a little careless with the truth sometimes.

Q. You did not believe him?

A. I didn't know what to believe, because he will tell you one lie and turn around and tell you forty more to square the first one, and I know him as my brother. He asked if I would drive him to Clayton's house and I said I would, and I didn't know what it was for.

Q. Has Clayton given you any money for remaining here and testifying?

A. No, sir; not a dime.

Q. He has just fed you and housed you since the 29th?

A. I have been out there visiting with my sister.

Q. You don't know when you were subpoenaed in this case?

A. I think the 5th, if I remember right.

Q. The 5th of December? A. Yes, sir.

[452]

Q. You were hanging around here with a job at Coos Bay without knowing what you were hanging around for?

(Testimony of Robert Doores.)

A. I wanted to see a little justice. It is bad enough for a man to go to the penitentiary when he is guilty, let alone when he is innocent.

Mr. Connelly: That is all.

Mr. Smith: That is all.

(Witness excused.)

Mr. Smith: The defendant rests.

The Court: Any rebuttal?

Mr. Connelly: No, Your Honor.

The Court: How long do you want to argue?

Mr. Smith: Does Your Honor want to limit the argument?

The Court: Yes, I always limit the arguments.

Mr. Smith: We should like at least an hour and a quarter or an hour and a half on a side. I would say. Mr. Gleeson and I both have some remarks we want to make about the case.

The Court: The jury may retire for a minute.

(The jury then retired to the jury room.)

Mr. Smith: All the testimony on the part of the Government and defendant having been fully completed, [453] and both the Government and the defendant having rested their case, the defendant at this time reviews his challenge to the sufficiency of the evidence; moves that the action be dismissed, or in the alternative that the Court instruct the jury to return a verdict of not guilty, as to the charge contained in the indictment.

The Court: The motion is denied and an exception allowed.

(Testimony of Robert Doores.)

(The jury then took its place in the jury box and Mr. Connelly presented his opening argument to the jury, in the course of which he said, in part, as follows:)

Mr. Connelly: It is going to be argued by the defense that this old mother loaned her son \$2,000. It is not a story which can be considered reasonable by any test of reason, in weighing the testimony, because she does not even offer you an explanation as to where the money came from, in what form it was, whether or not it was ever in a bank, or whether or not her son was son enough to give her a note to evidence the indebtedness, and you are sitting here as triers of the facts in an important lawsuit. I can only say to you do not be led astray by sentimental considerations. You are dealing with people of the under-world. Don't forget that for a moment. If a jury's intelligence can be stultified and insulted by a defense of that character, I say the bars [454] are down——

Mr. Smith: Just a moment. We will have to raise an objection to an argument of that kind. I think it is highly prejudicial.

The Court: I will sustain the objection, and instruct the jury to disregard the last statement.

Mr. Connelly: Kelly was man enough to plead guilty and testify, and there was nothing I could offer him. The penalties in this court are fixed by the Court alone. District Attorneys are not even allowed to make recommendations as to penalties.

(Testimony of Robert Doores.)

Mr. Smith: This argument is outside the case, and I object to it.

The Court: I think it is perfectly proper argument, and I will not sustain the objection. Under the instructions you have requested, I think it is proper.

(At the conclusion of Mr. Connelly's argument, Mr. Gleeson and Mr. Smith presented their respective arguments to the jury on behalf of the defendant, which argument was not reported by the Court Reporter.)

(Mr. Connelly then presented to the jury the closing argument on behalf of the Plaintiff, during which argument he said, in part, as follows, to-wit:)

Mr. Connelly: What can Kelly hope to get out of [455] it? Nothing. He has pled guilty here.

Shirley Doores has pled guilty, and in that connection, talking about witnesses who did not appear and those who did, has it occurred to you that the matter of the deed, paying the money, the exchange of deeds, the absence of Clayton from the meeting when the conspiracy was planned, if this were only Shirley Doores' deal with Kelly and Bunny, and if that is what he is relying on under this indictment for conspiracy, if the contentions of this man Clayton and the arguments of his counsel are true, the answer to all of it would be a simple statement of fact upon the witness stand from this girl who had pled guilty already.

(Testimony of Robert Doores.)

Shirley Doores, a narcotic addict, broken in health, taking bismuth from Dr. Teed—and he told you what for—has reached the end of her lane. Apprehended in this case, with whatever elements of courage she has left in her make-up, she has admitted she did it, but she will not lie for anyone, and she hasn't lied for anyone, and she has not taken this witness stand and supported her common-law husband in one single iota of his claim here.

Mr. Smith: I object to the statement that Shirley Doores would not lie for anybody. I do not think it is a fair inference to draw from the testimony.

The Court: The jury is the exclusive judge of all [456] the testimony, and will pass upon the argument, and give it such weight as it sees fit.

Mr. Connelly: We do not prove conspiracy ordinarily by direct evidence alone, but also by circumstantial evidence, and you will weigh all those circumstances. I submit the truthfulness of Kelly's statement is apparent, that this man Clayton had the money, and he quit his job and went looking for a place to buy. That deed was never recorded, and he did get that \$1250. You have heard Clayton's explanation of that, that he gave the deed to her. Shirley did not testify to that, and Shirley will not lie for anybody.

I submit the verdict should be guilty.

Mr. Smith: May I except to the remarks of counsel and ask that the jury be instructed to disregard it, as not based on any evidence in this case.

The Court: The jury is the exclusive judge of

(Testimony of Robert Doores.)

all of the evidence in the case, and is entitled to evaluate any argument made upon the basis of the evidence submitted. [457]

(Whereupon, the Court instructed the jury, to-wit:)

The Court: Members of the jury, you have heard the evidence and the arguments of counsel. As you know, it is now the duty of the Court to instruct you concerning the issues in the case and the law covering those issues.

As it is my duty to give you these instructions, it is equally your duty to accept the instructions as being the law. You will consider the instructions as a whole, and not place undue emphasis upon any particular portion of them.

In this case the defendant, George Clayton, is charged by indictment, along with Shirley Doores and Edward William Kelley, with the crime of conspiracy, which I will explain more in detail to you later.

The indictment has five counts. The defendant George Clayton, who is is now on trail, is charged only in Count 1, and you will give no consideration to the other counts in the indictment, and pay no attention to them. If it were permissible, I would take away from you the latter part of the indictment and only send in to the jury room with you the first count of the indictment, but the way it is drawn I cannot do that, so you will pay no attention to any other count but the first count.

The indictment is the mere charge against the

[458] defendant, and is not to be considered as evidence against him. You must indulge in no presumption against the defendant merely because of the fact that he is charged with the commission of the crime alleged in the indictment.

To the indictment the defendant has entered a plea of not guilty, which places in issue every material averment of the indictment, and casts upon the Government the burden of proving each and every averment in the indictment to your satisfaction beyond all reasonable doubt.

At a later point in the instructions I will explain to you about a conspiracy charge. I think at this point I should explain that in the charge of conspiracy under the Federal Conspiracy statute, the individuals charged with the conspiracy are charged with the act of conspiring, and then they are charged with having committed certain overt acts. In this case the indictment charges eleven overt acts.

Now, the Government has the burden of proving the conspiracy and the commission of one overt act in furtherance of it. It is not necessary for the Government to prove all of the overt acts charged. It must prove a conspiracy, plus one overt act, in furtherance of the conspiracy, so that an instruction upon the question of the [459] Government's burden to prove each and every material averment of the indictment is a little different in a conspiracy case than it is in any other case. In any other case it is necessary that the Government prove all of the allegations of the indictment. In a conspiracy trial

It is necessary to prove all of the material allegations of the body of the count, but it is necessary only to prove one of the overt acts, and prove that such overt act was committed in furtherance of the conspiracy.

The defendant is presumed to be innocent of the crime with which he is charged until guilt is established to your satisfaction and beyond all reasonable doubt. This presumption is a real thing. It is no mere fiction which either the Court or the jury may ignore. It is one of the defendant's substantial and important rights. It attaches to him and continues throughout all steps of the trial and throughout all steps of your deliberations as jurors. Until you have become satisfied of the defendant's guilt beyond all reasonable doubt, notwithstanding the presumption of innocence with which the law surrounds him, you must give him the benefit of this presumption, and give to the presumption its full weight and importance.

A reasonable doubt means such a doubt as will cause a reasonable, prudent and considerate man to hesitate or [460] waver in the graver and more important concerns of life. In a trial a reasonable doubt is such as a doubt as will cause you as jurors, being reasonable, prudent and considerate, to hesitate or waver before acting upon the truth of the matters charged or alleged. Such a doubt may arise from the evidence in the case or from the lack of evidence. You will not be swayed, moved, or become frightened by doubts which are purely fanciful or imaginary. On the other hand, you will not convict

in the face of doubts which are real and substantial. If after all fair, candid, common sense consideration of all the evidence in the case you can say upon your oaths as jurors that you have an abiding conviction of the truth of the charge to a moral certainty, then you have no reasonable doubt and should convict. If you have no such conviction to a moral certainty. if you entertain doubt for which sane and satisfactory reasons can be given in your mind, you must give the defendant the benefit of such doubt and find him not guilty.

You are exclusive judges of what is the evidence in this case, and of the weight and credit to be given the testimony of each witness. In doing this you may take into consideration the conduct, appearance and demeanor of the witness while testifying, his apparent candor and frankness, or the lack of such qualities, if [461] any such lack appeared; the reasonableness or the unreasonableness of his story, its probability or its improbability as measured by your common experience in life; the opportunity or lack of opportunity on the part of any witness of knowing or being informed concerning the matters about which he testified; his intelligence or lack of intelligence; any prejudice or bias disclosed by him; any motive which in your judgment would cause him to warp or color his testimony one way or the other, and the interest that he may have in the outcome of the case.

You will be slow to believe that any witness has deliberately testified falsely in this case, but if you should believe any witness has deliberately testi-

fied falsely as to any material issue, then you are at liberty to disregard the entire testimony of such witness, except insofar as it may be corroborated by other evidence of credible character.

In this case two of the witnesses, Mr. Kelly and Mr. Wesley Doores, are what are known in law as accomplices. The fact that witness is an accomplice doubtless operates and ought to operate largely against the credibility of his testimony, but the jury is not bound to reject such testimony merely because the witness is an accomplice. While it would be unsafe to convict anyone upon the uncorroborated testimony of [462] accomplices in the crime, the rule of law is well settled that accomplices are competent witnesses, and it is your duty to consider their testimony. In doing this you should weigh it and scrutinize it with great care. You are to test the truth of the testimony submitted by an accomplice by inquiring into the probably motives which prompted it and to what extent such motives might have colored or warped it. You are to look into the testimony of other witnesses in the case for corroborating facts or circumstances. Where the testimony of an accomplice is supported in material respects by credible and trustworthy evidence, you are bound to credit it. but where it is unsupported and uncorroborated you are not to rely upon it unless, after the exercise of great caution, it produced in your mind the most positive conviction of its truth, in which case you are justified in acting upon it.

In this case there has been testimony offered to

show that the Witness Wesley Doores had been heretofore convicted of a felony. The sole purpose of that testimony is to affect his credibility as a witness. When any witness is called to the witness stand it is competent to show that such witness has been convicted of a felony, and the jury in viewing the testimony should take that fact into consideration in connection with all the other [463] facts and circumstances surrounding the witnesses as disclosed from the witness stand, and then in the light of all of the facts, value the testimony of each witness at what you conscientiously consider it to be worth.

As I have pointed out, this defendant is charged with conspiracy, and only with the crime of conspiracy. The first count of the indictment involves the charge of conspiracy, the violating of a statute of the United States. The charge is that this defendant, Shirley Doores and Edward William Kelley, and others whose names to the Grand Jury are unknown, conspired to violate a statute of the United States by having extorted money from Dr. E. H. Teed, through the medium of Edward William Kelly impersonating a Federal narcotics agent.

A conspiracy to commit an offense against the United States means an unlawful agreement to do some act which by some law of the United States has been made a crime. The statute of the United States makes it a crime to impersonate a Federal officer of the United States.

When parties conspire to do acts and things which necessarily and inevitably must constitute

a violation of the criminal laws of the United States, then such parties conspire to commit an offense against the United States, and a party conspires to commit an offense against the United States when he conspires to bring about the [464] commission of such an offense by another.

The agreement or combination is the gist of the offense indictable and punishable under the statute. overt acts charged in the indictment to affect the object of the conspiracy, is necessary to make the offence indictable and punishable under the statute. By the expression "an act to effect the object of the conspiracy," commonly called "an overt act," is meant an act done by one or more of the conspirators, after the formation of the corrupt agreement or combination and during its existence, for the purpose of carrying such agreement or combination into effect.

The indictment in this case charged that the conspiracy alleged existed between April 9, 1944, and May 25, 1944. In order for any overt act to be binding upon any defendant than the one performing it, it must have been done between these two dates. The same is true of statements made by any of the defendants. No act done or statement made by any defendant after May 25, 1944, is binding upon any other than the defendant doing or making it.

Concerted action to violate the law is ordinarily shown by separate independent acts, each tending to exhibit and establish a common design and purpose on the part of those doing or participating

in such acts. This [465] common design and purpose is the essence of the crime of conspiracy, but to establish it it is not necessary to prove that the parties came together formally and actually agreed to terms to have that design or purpose or to pursue it by concert of action or by common means. The jury will be justified in inferring the existence of a conspiracy, if the Government satisfies you beyond a reasonable doubt, by the testimony of credible witnesses, that any two or more of the persons named in the indictment aimed by their acts to accomplish the same unlawful purpose or object, although all the parties so participating may never have met together at the same time to concert the means or to give effect to the unlawful design and purpose. Everyone coming into a conspiracy at any stage of the proceedings, with knowledge of its existence, is regarded in law as a party to the conspiracy, and as a party to all the acts done by any of the other parties to the conspiracy, either before or afterwards, during the period charged in the indictment in pursuance of the common design and purpose. One charged with conspiracy with many others may be convicted on proof of his conspiring with any of such others, without proof of a conspiracy participated in by all of them. The mere knowledge, acquiescence or approval of the act, without cooperation or agreement to cooperate, is not enough to [466] constitute one a party to a conspiracy. There must be intentional participation in the transaction, with

a view to the furtherance of the common design and purpose.

If you find from the evidence beyond all reasonable doubt that a conspiracy existed as charged in the indictment, then the acts and declarations of each party to such conspiracy, done or made in furtherance of the common design during the period alleged in the indictment and for the purpose of carrying the criminal enterprise into effect, are in contemplation of law the acts and declarations of all the parties to the conspiracy and are binding on all such parties.

But for the purpose of establishing the existence of a conspiracy or the connection of any defendant with it, the statements and declarations of each defendant must be confined to the defendant making them and no other defendant is bound by such statements or declarations.

A conspiracy may be proved either by direct or circumstantial evidence. It is not unusual for it to be proved by the use of circumstances. So the law says that in a conspiracy case the Government may be permitted to present its case on what the law calls circumstantial evidence. When it does ask for a conviction on circumstantial evidence, however, it has the burden not only of proving each of the essential facts or circumstances [467] to your satisfaction beyond all reasonable doubt, but it must also satisfy you beyond all reasonable doubt that such circumstances are only consistent with guilt.

You must believe before you can find the defendant guilty in this case upon the basis of circumstan-

tial evidence, that the circumstances proved as to him exclude all possibility of innocence, and that, after considering all the inferences reasonably to be drawn from the circumstances, your sound judgment requires you to reject any other inference and accept only the inference of guilt. This rule applies not only to the conspiracy, but as to the participation of any defendant in it. The law requires that you study all the evidence and that you weigh carefully the conclusions or inferences to be drawn from it. This includes conclusions or inferences favorable to each defendant as well as those unfavorable. It is only when a jury can say that, taking all the evidence and all reasonable inferences to be drawn from it, the circumstances exclude every reasonable conclusion except that of guilt, that a jury is justified in finding a defendant guilty on circumstantial evidence.

When you shall have retired to the jury room you will select one of your number to act as foreman, who will represent you in the further conduct of the case in court. You will take with you the indictment in the case [468] and the exhibits which have been admitted in evidence. You will also take with you a blank form of verdict. You know by now from previous experience the form I regularly use, and it is used only for the purpose of convenience, and is in no way taken as indicating any idea which I have about the case. It is very simple: "We the jury in the above-entitled cause do find the defendant Blank guilty as charged in the indictment." If you find the defendant guilty, the blank before

the word "guilty" will remain blank. If you find him not guilty, the word "not" will be inserted before the word "guilty." It will require the concurrence of the entire jury to agree upon a verdict, and when the verdict has been agreed upon you will have it signed by your foreman and will return with it into court in the presence of the defendant and in the presence of the entire jury,

Any discussion of the instructions?

Mr. Connelley: Yes. Shall I state it in open court or at the bench?

The Court: Come up here.

(The following proceedings were then had at the Court's bench, without the hearing of the jury:)

Mr. Connelly: I listened very carefully, as carefully as I was able to, and it is not clear to me that in the Court's definition of an overt act necessary to [469] constitute the crime, whether it might be the overt act of any of the defendants other than the defendant charged against in this case.

Mr. Smith: I think Your Honor has fully instructed on that point. The only exception I might take is to that very thing. They are very fine instructions.

The Court: They do not have to prove the overt act was by this defendant.

Mr. Smith: You have fully instructed on that.

Mr. Connelly: I feel that the last instruction on circumstantial evidence excludes all the direct testimony of the conspiracy, because each time you

say "you will find the defendant not guilty," if the case is based upon circumstantial evidence, which in this case it is not. It is a combination of direct evidence and circumstantial evidence.

Mr. Smith: We feel that the instructions as given fully cover the case, and that to give any more at this time will simply emphasize certain matters and it will be to the prejudice of this defendant, and we object to the giving of any further instructions.

The Court: The exception will be allowed.

Mr. Smith: I have no exceptions to the instructions as given. [470]

(Whereupon, the following proceedings were then had in the presence and hearing of the jury, to-wit:)

The Court: I do not want to over-emphasize any instruction that I have given. The instruction on conspiracy is rather complicated and difficult, as you realize, and in carrying out a certain suggestion made by Mr. Connelly, I am in no way emphasizing any particular point.

I will again call your attention to the fact that in the proof of overt acts the burden the Government has is to prove the body of the conspiracy, beyond all reasonable doubt, as to the conspiracy showing the agreement, which is the gist of the action, and to also show one of the overt acts alleged was committed in furtherance of the conspiracy.

That does not mean any particular one or more than one. They must prove one or more of the

overt acts alleged was committed by one of the defendants in furtherance of the conspiracy.

Mr. Connelly also has the feeling that by instructing you upon circumstantial evidence that you might have the idea I was limiting your consideration of the case to circumstantial evidence.

The Government in this case is attempting to make its case both on the claim of direct evidence and cir- [471] cumstantial evidence. I have instructed you about your consideration and the tests you will use in testing the testimony of Wesley Doores and Edward Kelly, and also the general tests that you will use in passing upon the testimony of witnesses without any specific classification, the Government contending that under the testimony of Wesley Doores and Edward Kelly it has direct evidence of the defendant having participated, but it is also relying upon circumstantial evidence, and you will consider the instructions as to each, and in considering the question of circumstantial evidence you will follow the instruction I have given you and weigh such testimony according to the standards I have laid down for you in testing circumstantial evidence.

Any further questions?

Mr. Connelly: No, Your Honor.

The Court: Swear the bailiffs.

(The bailiffs were then duly sworn.)

The Court: You will now retire to consider your verdict.

(The jury then retired to consider its verdict.) [472]

[Title of District Court and Cause.]

CERTIFICATE OF TRIAL JUDGE

The above and foregoing cause was tried before the undersigned Lewis B. Schwellenbach, Judge of the United States District Court for the Eastern District of Washington; within thirty (30) days after the date of the judgment, the time for filing, settling and procuring to be settled and signed the Bill of Exceptions in said cause was by me extended to April 16, 1945.

Now, Therefore, I, the Trial Judge aforesaid, do hereby sign, settle and certify the above and foregoing proposed Bill of Exceptions filed herein as the Bill of Exceptions in said cause.

Dated this 16th day of April, 1945.

L. B. SCHWELLENBACH

District Judge

Approved: and Notice Waived.

EDWARD M. CONNELLY

Attorney for Plaintiff and United States District Attorney.

HAROLD M. GLEESON

Atty. for Defendant.

Service Accepted & Copy Received March 23rd, 1945.

EDWARD M. CONNELLY

Attorney for Plaintiff

By JEAN GIEBEL

Chief Clerk. [473]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR BY DEFEND-
ANT GEORGE CLAYTON

Comes now the defendant and appellant, George Clayton, by his attorneys and states that in the proceedings herein and in the order and judgment entered herein there are manifest errors, and he assigns the following errors committed by the above entitled Court in the proceedings in the above entitled cause, to-wit:

Assignment of Error No. 1

The District Court erred in overruling appellant's motion, made at the end of the Government's case, to dismiss the indictment on account of the insufficiency of evidence, the contradictory nature thereof, and the lack of creditable proof of the existence of a conspiracy.

Assignment of Error No. 2

The District Court erred in failing to grant appellant's motion, made at the conclusion to all of the testimony, for a directed verdict of acquittal, or a dismissal of the indictment on the grounds of the insufficiency of the evidence, the contradictory nature of the testimony of the Government, and that all the circumstances relied upon by the Government were susceptible of two constructions, and the District Court was required as a matter of law to find that such circumstances indicated innocence rather than guilt on the part of the appellant.

Assignment of Error No. 3

That the Court erred in permitting the U. S. District Attorney over the objection and exception of the defendant to argue as follows:

“Mr. Connelly, (District Attorney): It is going to be argued by the defense that this old mother loaned her son \$2,000 * * * * * It is not a story which can be considered reasonable by any test of reason, in weighing the testimony, because she does not even offer you an explanation as to where the money came from, in what form it was, whether or not it was ever in a bank, or whether or not her son was son enough to give her a note to evidence the indebtedness, and you are sitting here as triers of the facts in an important law suit. I can only say to you do not be led astray by sentimental considerations. You are dealing with people of the under-world. Don't forget that for a moment. If a jury's intelligence can be stultified and insulted by a defense of that character, I say the bars are down—

“Mr. Smith: Just a moment. We will have to raise an objection to an argument of that kind. I think it is highly prejudicial.

“The Court: I will sustain the objection, and instruct the jury to disregard the last statement.

* * * * *

“Mr. Connelly: * * * * * Kelly was man enough to plead guilty and testify, and there was nothing I could offer him. The penalties in this court are fixed by the Court alone. District Attorneys are not even allowed to make recommendations as to penalties.

“Mr. Smith: This argument is outside the case, and I object to it.

“The Court: I think it is perfectly proper argument, and I will not sustain the objection. Under the instructions you have requested, I think it is proper.

“Mr. Connelly: * * * * * Shirley Doores, a narcotic addict, broken in health, taking bismuth from Dr. Teed—and he told you what for—has reached the end of her lane. Apprehended in this case, with whatever elements of courage she has left in her makeup, she has admitted she did it, but she will not lie for anyone, and she hasn’t lied for anyone, and she has not taken this witness stand and supported her common-law husband in one single iota of his claim here.

“Mr. Smith: I object to the statement that Shirley Doores would not lie for anybody. I do not think it is a fair inference to draw from the testimony.

“The Court: The jury is the exclusive judge of all the testimony, and will pass upon the argument, and give it such weight as it sees fit.

“Mr. Connelly: * * * * * We do not prove conspiracy ordinarily by direct evidence alone, but also by circumstantial evidence, and you will weigh all those circumstances. I submit the truthfulness of Kelly’s statement is apparent, that this man Clayton had the money, and he quit his job and went looking for a place to buy. That deed was never recorded, and he did get that \$1250. You have heard Clayton’s explanation of that, that he

gave the deed to her. Shirley did not testify to that, and Shirley will not lie for anybody.

"I submit the verdict should be guilty.

"Mr. Smith: May I except to the remarks of counsel and ask that the jury be instructed to disregard it, as not based on any evidence in this case.

"The Court: The jury is the exclusive judge of all of the evidence in the case, and is entitled to evaluate any argument made upon the basis of the evidence submitted."

Assingment of Error No. 4

That the Court erred in permitting the U. S. District Attorney over the objection and exception of the defendant to argue as follows:

"Mr. Connelly: * * * * * What can Kelly hope to get out of it? Nothing. He has pled guilty here.

"Shirley Doores has pled guilty, and in that connection, talking about witnesses who did not appear and those who did, has it occurred to you that the matter of the deed, paying the money, the exchange of deeds, the absence of Clayton from the meeting when the conspiracy was planned, if this were only Shirley Doores' deal with Kelly and Bunny, and if that is what he is clinging to on this indictment for conspiracy, if the contentions of this man Clayton and the arguments of his counsel are true, the answer to all of it would be a simple statement of fact upon the witness stand from this girl who has pled guilty already.

"Shirley Doores, a narcotic addict, broken in health, taking bismuth from Dr. Teed—and he told

you what for—has reached the end of her lane. Apprehended in this case, with whatever elements of courage she has left in her make-up, she has admitted she did it, but she will not lie for anyone, and she hasn't lied for anyone, and she has not taken this witness stand and supported her common-law husband in one single iota of his claim here.

“Mr. Smith: I object to the statement that Shirley Doores would not lie for anybody. I do not think it is a fair inference to draw from the testimony.

“The Court: The jury is the exclusive judge of all the testimony, and will pass upon the argument, and give it such weight as it sees fit.

“Mr. Connolly: * * * * * We do not prove conspiracy ordinarily by direct evidence alone, but also by circumstantial evidence, and you will weigh all those circumstances. I submit the truthfulness of Kelly's statement is apparent, that this man Clayton had the money, and he quit his job and went looking for a place to buy. That deed was never recorded, and he did get that \$1250. You have heard Clayton's explanation of that, that he gave the deed to her. Shirley did not testify to that, and Shirley will not lie for anybody.

“I submit the verdict should be guilty.

“Mr. Smith: May I except to the remarks of counsel and ask that the jury be instructed to disregard it, as not based on any evidence in this case.

“The Court: The jury is the exclusive judge of all of the evidence in the case, and is entitled to evaluate any argument made upon the basis of the evidence submitted.”

Assignment of Error No. 5

The District Court erred in permitting the United States District Attorney to comment in his argument to the jury, over the objection and exception of the defendant, that the defendant, George Clayton, failed to call as a witness in his behalf an alleged co-conspirator, Wilma Shirley Doores, a defendant in the same action but not on trial, which argument was as follows:

“Mr. Connelly: * * * What can Kelly hope to get out of it? Nothing. He has plead guilty here.

Shirley Doores has pled guilty, and in that connection, talking about witnesses who did not appear and those who did, has it occurred to you that the matter of the deed, paying the money, the exchange of deeds, the absence of Clayton from the meeting when the conspiracy was planned, if this were only Shirley Doores’ deal with Kelly and Buny, and if that is what he is clining to on this indictment for conspiracy, if the contentions of this man Clayton and the argument of his counsel are true, the answer to all of it would be a simple statement of fact upon the witness stand from this girl who has pled guilty already.

Shirley Doores, a narcotic addict, broken in health, taking bismuth from Dr. Teed—and he told you what for—has reached the end of her lane. Apprehended in this case, with whatever elements of courage she has left in her make-up, she has admitted she did it, but she will not lie for anyone, and she hasn’t lied for anyone, and she has not

taken this witness stand and supported her common-law husband in one single iota of his claim here.

Mr. Smith: I object to the statement that Shirley Doores would not lie for anybody. I do not think it is a fair inference to draw from the testimony.

The Court: The jury is the exclusive judge of all the testimony, and will pass upon the argument, and give it such weight as it sees fit.

Mr. Connelly: * * * We do not prove conspiracy ordinarily by direct evidence alone, but also by circumstantial evidence, and you will weigh all those circumstances. I submit the truthfulness of Kelly's statement is apparent, that this man Clayton had the money, and he quit his job and went looking for a place to buy. That deed was never recorded, and he did get that \$1250. You have heard Clayton's explanation of that, that he gave the deed to her. Shirley did not testify to that, and Shirley will not lie for anybody.

I submit the verdict should be guilty.

Mr. Smith: May I except to the remarks of counsel and ask that the jury be instructed to disregard it, as not based on any evidence in the case, and is entitled to evaluate any argument made upon the basis of the evidence submitted."

Assignment of Error No. 6

The District Court erred in further instructing the jury upon the subjects of conspiracy and circumstantial evidence at the request of plaintiff's attorney and over the objection of defendant after

the jury had been fully and completely instructed upon said subjects, thereby serving to emphasize in the jury's mind said instructions and, further, to weaken the instructions as given by the Court, to the prejudice of the defendant, which was as follows:

"Any discussion of the instructions?

Mr. Connelly: Yes. Shall I state it in open court or at the bench?

The Court: Come up here.

(The following proceedings were then had at the Court's bench, without the hearing of the jury:)

Mr. Connelly: I listened very carefully, as carefully as I was able to, and it is not clear to me that in the Court's definition of an overt act necessary to constitute the crime, whether it might be the overt act of any of the defendants other than the defendant charged against in this case.

Mr. Smith: I think Your Honor has fully instructed on that point. The only exception I might take is to that very thing. They are very fine instructions.

The Court: They do not have to prove the overt act was by this defendant.

Mr. Smith: You have fully instructed on that.

Mr. Connelly: I feel that the last instruction on circumstantial evidence excludes all the direct testimony of the conspiracy, because each time you say "you will find the defendant not guilty," if the case is based upon circumstantial evidence, which

in this case it is not. It is a combination of direct evidence and circumstantial evidence.

Mr. Smith: We feel that the instructions as given fully cover the case, and that to give any more at this time will simply emphasize certain matters and it will be to the prejudice of this defendant, and we object to the giving of any further instructions.

The Court: The exception will be allowed.

Mr. Smith: I have no exceptions to the instructions as given.

(Whereupon, the following proceedings were then had in the presence and hearing of the jury, to-wit:)

The Court: I do not want to over-emphasize any instruction that I have given. The instruction on conspiracy is rather complicated and difficult, as you realize, and in carrying out a certain suggestion made by Mr. Connelly, I am in no way emphasizing any particular point.

I will again call your attention to the fact that in the proof of overt acts the burden the Government has is to prove the body of the conspiracy, beyond all reasonable doubt, as to the conspiracy showing the agreement, which is the gist of the action, and to also show one of the overt acts alleged was committed in furtherance of the conspiracy.

That does not mean any particular one or more than one. They must prove one or more of the overt acts alleged was committed by one of the defendants in furtherance of the conspiracy.

Mr. Connelly also has the feeling that by instructing you upon circumstantial evidence that you might have the idea I was limiting your consideration of the case to circumstantial evidence.

The Government in this case is attempting to make its case both on the claim of direct evidence and circumstantial evidence. I have instructed you about your consideration and the tests you will use in testing the testimony of Wesley Doores and Edward Kelly, and also the general tests that you will use in passing upon the testimony of witnesses without any specific classification, the Government contending that under the testimony of Wesley Doores and Edward Kelly it has direct evidence of the defendant having participated, but it is also relying upon circumstantial evidence, and you will consider the instructions as to each, and in considering the question of circumstantial evidence you will follow the instruction I have given you and weigh such testimony according to the standards I have laid down for you in testing circumstantial evidence."

And by reason of said errors and other manifest errors appearing in the record herein, the defendant and appellant, George Clayton, respectfully prays that the judgment of conviction herein be set aside and that the indictment be fully and in all respects dismissed as to him and that he be fully discharged herein or in the alternative that he be granted a new trial.

Dated this 16th day of April, 1945.

ROBERTSON & SMITH

By DEL CORY SMITH, JR.

ROBERT M. GLEESON

Attorneys for Defendant,

George Clayton

Service of the foregoing Assignments of Error by Defendant George Clayton is hereby accepted, and the receipt of a copy thereof is hereby acknowledged, this 16th day of April, 1945.

EDWARD M. CONNELLY

United States Attorney, Counsel for Plaintiff-

Appellee United States of America.

[Endorsed]: Filed Apr. 16, 1945.

[Endorsed]: No. 10972. United States Circuit Court of Appeals for the Ninth Circuit. George Clayton, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed April 25, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10972

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
against

GEORGE CLAYTON,
Defendant-Appellant.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY, AND
DESIGNATION OF PARTS OF RECORD
TO BE PRINTED

Appellant George Clayton for his statement of points upon which he intends to rely on his appeal to this Court from the judgment and conviction entered by the District Court of the United States for the Eastern District of Washington, Northern Division, on April 16, 1945, hereby adopts the specifications of errors contained in his Assignments of Error filed by him on April 16, 1945.

DESIGNATION OF PARTS OF RECORD
TO BE PRINTED

Pursuant to Rule 19(6) of the Rules of this Court, appellant George Clayton states that the entire record on appeal is necessary for the consideration of the appeal from the judgment and conviction herein and that accordingly said appel-

lant designates for printing the entire record, including the exhibits.

Dated this 23rd day of April, 1945.

ROBERTSON & SMITH

By DEL CORY SMITH, JR.

HAROLD M. GLEESON

Attorneys for Defendant-

Appellant George Clayton

Service of the foregoing Statement of Points on which Appellant Intends to Rely and Designation of Parts of Record to be Printed is hereby accepted, and the receipt of a copy thereof is hereby acknowledged, this 23rd day of April, 1945.

EDWARD M. CONNELLY

United States Attorney, Counsel for Plaintiff-

Appellee United States of America.

By JEAN GIEBEL

[Endorsed]: Filed Apr. 25, 1945. Paul P. O'Brien, Clerk.

